

AN *aug 3* ²⁰ *c +*
A R G U M E N T
FOR THE
Bishops Right
In Judging in
CAPITAL CAUSES
IN
PARLIAMENT:

For their RIGHT unalterable to that Place in
the GOVERNMENT that they now
enjoy.

With several Observations upon the Change of our
English Government since the Conquest.

To which is added a Postscript, being a Letter to a
Friend, for Vindicating the Clergy, and rectifying
some mistakes that are mischievous and dangerous to
our Government and Religion.

By THO. HUNT, Esquire.

*In Turbas & Discordias pessimo cuique plurima vis
Pax & quies bonis artibus indigent. Tacit.
Hist. l. 4.*

○ L O N D O N,
Printed for Thomas Fox, at the Angel and Star
in Westminster-Hall. 1682.

TK
H939at

Rio. Jan. 17, 1899.

THE
P R E F A C E.

THis Argument for the Bishops Right of judging in Capital Causes in Parliament, for their being one of the three States of the Realm, and that their Right is unalterable by Law, was written above two years since, and prepared for the Press, time enough to be made publick against an expected Session of Parliament, in *October 1679*. But the Parliament being prorogued from that time until *January*, the Author was willing to respite the Publication to advise with his second thoughts; and again to review what he had written in a case of this weight and moment; and the rather, for that he had but a short time allowed him for its composition. Since that there has been published by an excellent person, a Book in vindication of their Right of judging, called *The Grand Question*, sufficient to give satisfaction; if the world were just and impartial, and disposed to make right Judgment in the Cause.

It may well be reasonably expected that Christian People should not be only just, but favour-

The Preface.

nable to any pretence of a Christian Bishop to any secular trust that does not lessen the dignity of the Office, and seems unworthy of his Character ; which as it exempts him from mean and fordid offices and affairs, of an inferior and more private concernment , so it commends him to the Government of matters of a more publick and universal influence, such as require the most improved wisdom and learning, and a noble virtue.

It seems to me most unreasonable that those that are the great and principal Expounders of the Christian Law, which gives Law to all Laws, and instructs men to discharge their several Offices both publick and private ; that those who are the great Guides of our Consciences, and by whose Directions and Institutions we form our Judgments in the greatest intricacies and doubts that perplex humane affairs ; that the Guides of a Religion which is formed all to life and practice ; for the making Governments equal, and private men good and obedient , which is little else but an Obligation to Justice and Charity, and principally pursues that which is the end, design, and whole business of Government : I say, it seems to me most absurd and incongruous, that this Order of men at any time ought to be shut out of that Council and Court, where Laws are made, and Rules given, for the Government of a Christian Common-wealth, where the most difficult and intricate causes are to be heard and determined,

The Preface.

determined, and where an unlimited power remains of censuring the Actions of the greatest men, and the administration of publick affairs, and the safety of the Nation are consulted, which cannot be long preserved but by pursuing the dictates of a wise Religion: Such is the Christian Religion, if any other; we should dishonour it by comparing it to the best.

Paganism became despicable and abandoned soon after its publication: Yet *Tully* in his Oration *ad Pontifices*, magnifies the wisdom of the *Romans* as Divine, in advancing the *Pagan Priests* to the highest places in their Common-wealth, by which the Common-wealth he saith was preserved. *Cum multa Divinitus, Pontifices, à Majoribus nostris inuenta atque instituta sunt, tum nihil præclarior, quam quod vos eosdem & Religionibus Deorum immortalium & summa Reipublicæ præesse voluerunt: Ut amplissimi & clarissimi Cives Rempublicam bene gerendo, Religiones sapienter interpretando Rempublicam conservarent.* Such an Opinion more duly and with better reason our Ancestors conceived of the advantage that might accrue to the Nation by advancing the Prelates of the Church into the Civil Government: Thereupon they have made them necessary to it, and framed the Government in a sort to depend upon them, and left it scarce able to maintain it self without them in its present constitution. The Temporal Barons will soon find themselves unable to maintain their own dignity, and to sustain

The Preface.

that province that is allotted to them in the Government, unassisted with the Interest and authority of the Prelates, the Spiritual Barons, a mighty Power if they be, as they ought to be, of venerable esteem with the people.

If the present Bishops are not all so happy as to possess such an esteem, we know what cause to assign for the same, *viz.* the unhappy Schism that hath too long continued in our Church, hath for its own Justification, after they are almost sham'd out of the scruples which first caused the separation, sought occasions against the Persons of the Bishops, and rather than they will want faults to complain of, the Order it self must be loaded with all the faults of all the Bishops in all Countries and Ages, and they adventure now to disparage their persons for the sake of their office. But sure it is a folly that can fall upon no people, but such who by the evils they feel or fear, are vext out of their understanding, to suppress any Office that is necessary to any Common-wealth in any form of Government, for the faults of the Officers for the time being: But too true it is, that a form of Government while established, may be so utterly misunderstood by the most, when it is not, or not duly administered, that a true and exact description of it, and a discourse of the Offices and Functions of the severall parts of the Government would be taken by them for some *Utopian* Common wealth, or no better please them than a description of the strength of an impregnable Fort, once

The Preface.

once the Security of the Nation when invested by the Enemy. A Lecture of a learned Physician of the *Usus Partium* will not give sight to a blind Eye, nor motion to a withered hand ; and nobody is warmed or comforted by a painted fire : But God be thanked we are not yet destitute of the benefits of a good Government.

Another cause I apprehend may much lessen the Bishops in the esteem of the People, and make them want that Reputation that is necessary to every Governour in proportion to his Charge, is their manner of promotion. The Ministers of State, whose business it ought to be to understand the true Characters of men that are preferred to that Office, are often mistaken ; however in this Course they seem not to be promoted for their own Merit, but at the pleasure of the great Courtiers, and at best the Ministers of State can do no more than recommend to the King for that office the best of those they know, which are many times most unfit.

But this may be remedied when his Majesty shall please to give leave to the Clergy of the Diocess to choose their own Diocefan, their Choice notwithstanding submitted to the Kings approbation and Confirmation (which was permitted by *Justinian* the Emperor, and was in use in several of the best Ages of the Church) or by some other method which may be advised by his great Council, whereby the greatest assurance may be given that the best and fittest persons be preferred

The Preface.

to Bishopricks : for the Common people are envious and suspicious, and what ever may be done by bad means they always think is so. But if Bishops were promoted to their Sees with the gratulations and applauses of the whole body of the Clergy of the respective Diocesses, all that passeth under their advice and consent would likely meet with the general satisfactions of the people, as it would well deserve, as long as the Clergy can have any Authority with them ; That is, as long as the Nation continues Christian.

But the general Corruption of Manners and decay of Piety is the great and truest cause why the Bishops, unenvied enjoy no part of that honour that our Ancestors Wisdom and Piety conferred upon their order conformably to all other the Ancient Christian Governments. But when Virtue and Piety shall recover their esteem, the reverence of the Clergy will return. We are not like long to expect this happy Change, for Vice is now arrived to a *Plethora*, and like to burst by its own excesses : And we well hope that the mischiefs which we suffer will cure that evil from whence they spring, and prevent the greater Calamities that it further threatens. However it becomes all good men to assist, to support the present Government, which is the cheapest, the surest and the next way to arrive at a happy constitution of things. This was the design of the Author of the *Grand Question*. After the publication

The Preface.

cation of that Book I laid by all thoughts of publishing this Treatise : But perceiving that notwithstanding what he hath said, the Right yet remains controverted, and a Book is since printed, wherein several things are objected in prejudice of this Right, and more is expected : I did review these Papers, wherein I found I had prevented those objections, and with a little application they would appear insignificant. I did resolve to make this publick. And besides that I apprehended some things material to the Question were omitted by the Grand Question; that a several way of speaking things to the same purpose hath its advantage. Our great Courts affect to have several arguments on the same side in great Causes, and our Reporters publish them. Besides herein several things are occasionally discours'd of, which makes it of further usefulness to the publick. Our adversaries also were treated too kindly by him and had deserved sharper reflections than he makes upon them for their false and perverse Reasonings, and ought to lose that reputation which they abuse to the hurt of the Government. And further, I thought it not for the honour of our faculty that never fails to supply the worst cause with Advocates, That a question of this Nature, wherein both Church and State, Religion and our Civil Policy is concerned, and the Right thereof not only clear and evident in it self but also useful to the State, should have not one of the Robe to plead for it. The friends of the Cause

The Preface.

Cause will not grudge to read two Books for the Right as well as several against it, and the Adversaries of our Cause ought to suffer the like trouble themselves which they occasion to others.

These Considerations did induce me to publish this Treatise. I am well pleased that I am engaged in a good Cause that was suited to one of my slender Abilities. Right is so strong an Argument for it self, that it wants only light to discover it: Whereas an unrighteous cause stands in need of disguisings and shadowings, and all the Artifices and fetches of the Wit of abler men, to give that a Colour at least which is destitute of Law and Right.

THE

THE CONTENTS.

CHAP. I.

THe Nature of the Right, the obligation to use it, the obvious indications of it, and the benefit which may be reasonably expected in the exercise of it. How it came to be drawn into question, and how it can be fairly determined, how it hath been opposed, and upon what Reasons and Evidence the Right doth rely.

Chap. II. The general prejudice against this Right, from an Opinion conceived that the Clergy ought not to intermeddle in Secular Affairs, remov'd. That Bishops have been employed in the greatest trusts by Emperors, not hindred by the Church, but this hath been envy'd to them by the Pope.

Chap. III. The Precedents that are produc'd from the Parliament Rolls against this Right, are considered. They prove not pertinent at most, but bare Neglects, not Argumentative or concluding against the Right.

Chap. IV. This Right cannot be prejudic'd by non user. The Nature of Prescription, that the Right in question is not prescriptible. The Original of this Right, that it is incident to Baronage. The Bishops when made Barons, and for what reason. That all Offices whether by Tenure or Creation are Indivisible.

Chap. V. Bishops never pretended the Assise of Clarendon, when said to be absent. Bishops sat in Judgment upon Becket, and his Crime and Charge Treason, by which it is demonstrated that the Assise of Clarendon only put them

at

The Contents.

at liberty, but not under restraint from using their Right of Judging in Capital Causes.

Chap. VI. *Bishops sat in Judgment upon John Earl of Moreton, after King John, the Bishop of Coventry, &c. for Treason.*

Chap. VII. *An Opinion prevail'd and continued long, that no Judgment in Parliament where the Bishops were absent, was good, and their absence assigned for Error, to reverse Judgment in Treason in Parliament, prov'd by the Petition of the Commons 21 R. 2. upon their protestation made 11 R. 2. And by that protestation it is evident they had a Right, and that they saved it by that protestation. They pretended they could not attend the matters then treated of by reason of the Canon. But alledged no Law for their absence.*

Chap. VIII. *Of Canons, Canon law. What effect Canons can have upon a Civil Right. The Canons prohibiting the use proves the Right.*

Chap. IX. *Bishops made their Proxies in Capital Causes, which proves their Right and their thereby being virtually present, and the lawfulness of making Proxies and such as they made.*

Chap. X. *A Repeal of the Parliament 21 R. 2. No prejudice to what the Bishops did in making their Proxies. The Opinion of Bishops presence being necessary in Parliament continued in time of H. 5.*

Chap. XI. *Bishops actually exercised this Authority in 28 H. 6. in the Case of William de la Pool Duke of Suffolk. Opinion of the Judges, that Bishops ought to make Proxies in the Tryal of a Peer in Parliament. Of what consideration decency can be.*

Chap. XII. *Their Sitting in Judgment not so much against the reason of the Canon, as their assent to Bills of Attainder which was never condemned. And the Nature of an Act of Attainder.*

Chap. XIII. *Over-ruling a Plea of pardon doth not condemn*

The Contents.

denn the Criminal, and therefore they may judge of such Plea ; Though they are not to be present at the making of a Judgment of Condemnation.

Quousque perveniat in Judicio further explain'd. And that which follows upon another thing is not always caus'd by it.

XIV. Bishops one of the three Estates of all the Realms of Christian Europe. And how they came to be advanc'd to that dignity and trust. The convenience of their not being divided in a distinct house from Lay Peers. They cannot be detruded from that dignity no more than the Government can be chang'd, which no Law can do. Six Bishops of the twelve Peers of France, and their Aristocratical power. That all Governments are lawful that are lawfully establish't.

Chap. XV. William the Conqueror agreeable to all the Princes of that time, put Bishops under Tenure by Baronies, and all Baronies at that time feudal, with the reason of his Policy and the inconvenience it produced. Of the Curia Regis which consisted of the Baronage, in which the Capitalis Justitiarius Angliæ did preside. Of the administration of Justice in that time. And that the Baronage of England upon special Writs of Summons became a Parliament. An account how all our present Courts derived out of it. Of the Court of the High Steward, and of the Court of Chancery, and the reasons of its rise and growth, and how inconvenient it is. And how we recovered out of the inconveniencies of that Constitution of Parliament, by representatives in the time of H. 3. And that this, it being allowed, can give no countenance to those that are desirous to change our present and better Constitution. That in all this Change the Bishops suffered no diminution. But when the ancient reason of Baronage failed, they are after to be considered under the new reason of Baronage.

Chap. XVI. The remembrance of the old reason of Baronage became a prejudice in the Judges, upon which T. Furnival

The Contents.

val Plea allowed, that he held not per Baroniam. An Entail of Baronies with lands after allowed. The reason of Nobility changed, and no man now Noble by his Acres. Many men Summoned to Parliament, and yet not Noble. No prejudice to the immovable Right of Bishops to have Summons to Parliament, and that objection answered. Kings may erect new successive Nobility in Clergy-men. That Bishops are of a distinct sort of Nobility, and under that and other reasons they are considered as a distinct State.

Chap. XVII. Of the three States which make the Government under the King, that he is none of them. The Objections against this answered. And the reasons of their being distinct, and the several Offices and Expectancies in the Government that make them so.

That the several Orders of Peers make but one Baronage, and in that there is a great trust, and honour greater belongs to Bishops than Lay Barons in our present constitution. Their Character and qualifications commend them to the highest trust, and render them fittest Judges.

Chap. XVIII. The Reason of Tryals per Pares, and that the Bishops are competent upon that reason in Parliament, though not so fit to be of the High Stewards Court. The Law of *M. Charta not Lex scripta*. Bishops ought to be tryed by their Peers. How that Right came to be discontinued, and that in Parliament they ought still to be Tryed by their Peers.

Chap. XIX. The unreasonableness of maintaining an Opinion upon a single Objection against a matter evidently proved, that Questions of this nature should be considered with candor, and not opposed with meer possibilities.

Chap. XX. Several alterations in the Government since the Conquest, that the Alteration in what concerns the Baronage, the Bishops Right is to be considered in analogy to the Change.

That changes of Government for the better cannot again be altered, but our zeal is required to defend the Government made better, and they deserve ill that go about to reduce us to our old mischiefs by their Antiquity.

Chap:

The Contents.

Chap. XXI. *The advantage of the Change in the constitution of our Parliament, in the change of granting Subsidies. And how the Lords are bound by a Bill of Aids.*

Chap. XXII. *The beneficial Change that hath been made by the clause præmunientes in the Bishops Writs of Summons to Parliament, which gives Authority for the Convocation. By this we are discharged of Provincial Councils, and Canons of the Church kept distinct from Laws of the State. The Church kept in peace from rending Questions, and Religion is conducted not by Laws but by Canons, not force but persuasion, which commends our Episcopal Government.*

Chap. XXIII. *The danger we avoided of having our Baronage of England ambulatory, and fixing of it in Families and an indefectible Succession, in which the Right of the Peerage of Bishops is established.*

Chap. XXIV. *The advantages the Adversaries seek to their cause by aspersing the Bishops. Remembrance of all the faults in all times committed by any of the Order, that many of those faults are principally due to the Papal Usurpation, and the neglect of Kings to defend the Rights of their own Bishops, and are all the Vitia Temporum the times of Popery.*

Chap. XXV. *How inculpably our Bishops have been in administration of their Ecclesiastical Authority, how faithful in their Temporal Trust, and Asserters of the Rights of the people. They have not been irreverent to Kings, nor have they encroached any power in Civil matters in ordine ad spiritualia. That the power that they challenge is merely spiritual, and they challenge nothing of Divine Right but the exercise of their Ministry, which they cannot lay aside. Mr. Selden's Arguments for Erastianism answered. The Church of England doth not tie her self always to think and enjoyn as she doth at present. The moderation of the Church in opinions, her apprehensions of Schism just and great.*

They are not answerable for the ejection of the Nonconformists, nor for the scandalous Lives of their Clerks, nor their

The Contents.

their Chancellors, nor abuse of Excommunications. Why matters of Incontinency are committed to their censures. They have exercised the power of the Keys against the Infractors of M. Charta, and how it hath been guarded with the denunciations of the Church, we have reason to expect as much from our Bishops to support the Government of Laws.

Chap. XXVI. We have as much reason that the Protestant Bishops should be as constant to the Reformed Religion, as Popish Bishops obstinate for Popery. An Apology for their Unanimity in Voting. Their dependance not so great upon the Crown, as to oblige them to disserve their Prince. The King bestows nothing upon them but what is the Churches, the great expectation the Government hath of their fidelity and performances. That which advanced them must continue them great. The contempt of the Bishops and Clergy the great cause of our evil State at present; out of which we cannot recover but by an excellent Clergy, and a high esteem of them with the people.

The Postscript.

E R R A T A.

PAGE 13. Line 18. read *they*. p. 15. l. 15. r. *Taxeotam* & *Buleutam*. p. 19. l. 9. r. *Blænsis*. p. 23. l. 4. r. *can*. p. 44. l. ult. dele *as*. p. 51. l. 22. to but add *not*. l. ult. to *usage* add *other*. p. 57. l. 29. r. *hucusque*. p. 130. dele *in*. p. 165. l. 8. r. *here*. p. 167. r. *interpolatus*. p. 180. l. 3. dele *them to*. r. *send*. l. 29. to *fit* add *to mention*. p. 206. l. 29. r. *injurious*. p. 240. l. ult. dele *near*.

P O S T S C R I P T.

p. 32. l. 1. r. *he made his natural Sons first noble*. l. 7. r. *Eufame*. p. 34. l. 1. r. *is not subject*. p. 42. l. 25. r. *decendants*. p. 45. l. 30. r. *he*. p. 46. l. 8. r. *more cruel*. p. 58. l. 18. r. *futility*. p. 59. l. 26. r. *being*.

What else is escaped, the Reader is desired to correct; by reason of the Authors absence from the Press.

THE



The Argument.

CHAP. I.



IN this question the Constitution of the Government is concerned, and the Right of a most principal constituent part, and that in a matter of the highest Trust, which if truly a Right, can be no more relinquished (as the Nature of this Right is) than a trust can be betrayed, a duty and a Right denied to be paid and performed, or the Constitution of the Government changed.

For of such a Nature doth appear to be the Right in pretence and Controversy, of the Lords

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the Bishops to have judgment in the House of Lords in Capital Causes.

For by their being made Barons, they owed their judgments in such Causes as a service to the King, at first by their Tenures in Baronage (for though since they are become *Barones Rescriptitii*, or Barons by Writ, their duty is not abated.) And besides, the Cognisance of such Causes become their own Right, being a part of and belonging to the dignity and office of a Baron. And it likewise became an appointment in the Government, in which the whole Community have their Interest (for that is principally provided for and procured in all Governments) whose greatest concern it is to have Justice done against all Criminals; and to have great and wise, just and good men in the Administrations of Justice, and other great offices of the Government.

The people of *England* did anciently understand the benefit of this Constitution, when nothing but the Baronage of *England*, the Lords Spiritual and Temporal, could resist the Torrent of Arbitrary Government. And it may be easily understood too, that nothing but the Baronage of *England* is able to support the Throne: For that Monarchy unless so supported, is the weakest and most precarious and dependent Government in the World except it be supported with an Army, and turned into a Tyranny. That the Throne should be established by Natural and gentle

gentle provisions, and the Government fixed is every mans greatest interest.

If the Lords Temporal have more under command, and a larger *Potestas jubendi* ; yet the Lords Spiritual out-did them *Authoritate suadendi*, and had more voluntary obedience. The Lords Spiritual have several Advantages as they are *Novi homines*, men chosen out of Thousands for an excellent Character and Spirit, and need not want any accomplishments, if duely chosen and preferred, for the discharge of the greatest Provinces that are to be managed by wisdom and integrity ; and therefore they cannot be well wanted in any Ministries in the Government, to which they are bespoken, and have a legal designation.

Since this Authority by the very opening of the Cause doth appear probably belonging to the Bishops, and if so that it cannot, without breach of their duty that they owe to all the parts of the Government and the whole Community, depart from it ; it may surely be insisted upon, disputed and maintained by them without blame or imputation. But so unhappily it falls out, that the very disputing and contending of this Matter by reason of the unseasonableness of the dispute, and the delays that were thereby given to the most important business of the Nation, to the great hazard as some think of the sum of Affairs, was very mischievous to the publick. And now both parties

are charging one another with all the mischiefs and the delays, that this Controversy hath given to publick proceeding, or can with any probability be thought to have occasioned. And there are not men wanting, on either side within doors and without, that are forward enough to charge all those mischiefs as deserved by their opposite party, which may eventually happen hereupon.

Who sees not how fatal this Controversy is like to prove to one or other of the Litigants, and to the Government in consequence, if this Cause cannot be duely heard and considered, and be determined upon its own Merits, without undue Censures and Reflections on either side : Since at last the contenders themselves must be the Judges, and give judgment in the Cause, or it can never be quieted and have an end. I am sure, passion is no equal Judge and Arbiter, and men angred and provoked have not the same sentiments of the same things, as when calm and serene. And because there is no common Judicature, it ought to be considered by both parties with all equality of judgment and an exact pondering and weighing of the reasons offered on either side ; for that otherwise it can never be fairly decided, but must for ever remain a Controversy to the immediate overthrow and destruction of the Government, or over-ruled by the force and Power of a most dangerous consequence in the course of time, to the Government, and will be a laying
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of the Axe to the very root of the Tree, and will put the Government it self into a State of War, between the severall constituent parts of it, and give an occasion for one part to usurp upon another, until the tone and frame of Government become changed, and at last fall into ruine.

I am very well aware of the gravity of the Question and its importance, the high honour and regard that is due to the House of Commons in Parliament, what commendations are due to them in their persons, for their zeal and endeavour by all means if it be possible, to save the Nation, Religion and Government: And what a great Capacity, that House in its very constitution, in the first designation of the Government, and by their mighty growth in power and interest in the Course of time, have in procuring the publick good, and that they cannot have any interest divided from the common Weal. I must do them right, and with the greatest clearness and satisfaction, I determine with my self, that their zeal for publick Justice against unpardonable offences in their judgment, and a prejudicate opinion they had conceived of the Spiritual Lords unindifferency (how duely will appear by and by) gave the first occasion to this Question, which was the true *causa suasoria* of their denial to the Bishops a Right of Succession and judgment in that noble question, Whether a Treason of State can be pardoned? And that put them

upon the search of Precedents, an Oracle that will alwayes give a *Response* agreeable to the Enquirer and Consulter. For I am sure there is nothing so absurd and irregular, that rude Antiquity, and the miscarriages in humane Affairs, in length of time will not furnish a Precedent for. And these Precedents such as they were reported (which we are hereafter to consider) by their diligent Members, became a *causa justifica*, and the matter in pretence to warrant their proceedings, that a great reason of State did seem to them to require.

And now whether the Lords Spiritual can be Judges in Capital Causes in Parliament is become a Question.

Though the Bishops Right to judge in capital Causes in Parliament, seem to be clear and materially demonstrated from what is visible and obvious, to the most vulgar observation of the constitution of the Government; every body knows how the Lords Spiritual and Lords Temporal are placed in the stile of Acts of Parliament, and in the Heralds order in the House of Lords.

The Arch-Bishops give first their Votes, even before Dukes; The Suffragan Diocesans after the Viscounts, and before the Barons: And in the same order did the Bishops stand in the publick Census in the times of the Saxons, as may be seen in Sir *Henry Spelman* his Glossary in the word *Alderman*.

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The great Authority, Power and Rule, that was intended the Prelates should have in all the great concernments of the Kingdom, that were to make the business of the House of Lords, may be best understood from the high place that hath been alwayes allotted to their Order in that House; for Publick and civil honours are alwayes appointed and adjusted to the dignity of the Ministers, offices, and Services, that are to be performed to the Government. Such a solecism was never enacted by an Order of State, That those persons that were less in power, and under abatement and restraint of Authority, should be preferred to those in place, that had plenary power in the same Courts. It is well known too, That the Arch-Bishop of *Canterbury* was originally honoured with the first Writ of Summons to Parliament. Since the Conquest there never was an *English* Bishop, that had not his several Writ of Summons to Parliament; Though the number of Temporal Barons have been reduced, and many of the Regular Barons dismist of that honour: for that their office was nothing in the Church, and nothing but the possessions of the Abbots, preferred them to that State. Nothing seems too big or too high for so great and publick a character of the Bishops, or out of the intendment of their trust that can ever be the business of a Parliament. The greater the matters are that are agitated there, the more necessary is the assistance of the Bishops; for he

that in any affair is most trusted, is to be most concerned, and by how much the affairs are of greatest moment, in the same proportion they are more strictly obliged and required to assist in the management thereof.

We all know what sort of criminal prosecutions those are, that are made in Parliament, and what great consideration they are of, that they are alwayes the symptoms of a very sickly State, and the results of very great disorders in the Common-Wealth. In these Cases, if in any, the Lords Spiritual cannot be wanted: The neglecting to interpose in any one single prosecution that is Parliamentary, hath proved the occasion, That their Right of Session is now brought into Question. For to speak the truth, it is not very consistent with the Reverence that is naturally due to the Prelates, to think that a Trust and Authority of so high a nature, should be committed to them, and they should at any time find reasons to neglect it. But for what omisions they have been guilty of (though upon a general consideration without examining the particular Causes and Reasons, men not friendly to their Order, may thus censure them) we shall make a fair Apology as we shall meet with them, and as they fall in to be considered in this Discourse.

We are now to give you some account, how this comes now to be a question, for the very questioning thereof makes some prejudice against the

the Right; and there is scarce any thing so certain and true in Nature, but if once put under dispute, that can recover again into a general certainty and assurance.

It hath scarce escaped any mans observation, that hath been acquainted with the business of the Courts of Law, That the greatness of the pretender, and the value of the Interest and Right in pretence, doth cause a point of Law to be contended, which would never else have been stirred, especially if the Right be invidiously possessed by another. Besides these three considerations, which are foreign to the true Right, I protest there is nothing to my apprehension of any moment offered in Print to continue it a Question.

I find Two Books Printed upon this Question, both of them tending to disgrace the Bishops Right of judging in capital Causes in Parliament. One in Octavo, called *A Letter of a Gentleman to his Friend, shewing the Bishops are not to be Judges in Parliament, in Cases Capital.* He begins with a Preface containing some matters and reasons against Bishops intermedling at all in secular affairs; and after that he tells us, That the Law of Parliament is best declared by usage, gives us several precedents, wherein he supposes the Bishops absent; and concludes they were so for want of Right and Authority to be there. And to give some Authority to his Precedents of omission (as he would have them)
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He tells us of the Affize of *Clarendon*, an Act of Parliament made 10 *Hen. 2* that excluded the Bishops in such Causes; and of a Protestation made by all the Bishops in the 11 *R. 2.* whereby they renounce all Judgement of Right in such Causes, upon the obligation they were under to the Canon Law: and to render it impossible, they should have any such Right, and to make them incompetent Judges, he adventures to say and prove after his manner, That the Bishops are not Peers; and to prepare the way for their remove out of that House, he adventures to broach an opinion, That the Bishops *are not one of the three States, nor an essential part of the Government.*

There is another Book in *Folio*, called *A discourse of the Peerage and Jurisdiction of the Lords Spiritual in Parliament.* This Author pursues the same design, upon the same grounds, with some peculiar reasonings of his own. If therein I give him satisfaction in what he hath peculiar, without mentioning distinctly of them, I am sure he will thank me for it.

But we will consider the *Octavo's* Preface, examine his Precedents, and shew that they are either not against us, or for us. And all along observe the candor and integrity of the Author. We shall further shew how absurd his Reasonings are to make those Precedents to conclude any thing for his purpose. We will also with the

the clearest demonstration prove, That the Affize of *Clarendon* establisheth the Bishops Authority and right to judge in capital Causes in Parliament : And likewise, that the protestation made by the Bishops 11. R. 2. is a most solemn Recognition of their Right ; that the Bishops have sate in Judgment in the greatest capital Causes in Parliament that ever happened ; that this their Authority hath been exercised in their own Persons, and by their Proxies, and recognized by Parliaments, and other great Courts of Judicature ; but never before this time brought into Question : That no Canon could lessen the Right, at most it is but a Councel for their guidance in the exercise of their Authority, which they might observe as they please : That the Popes Canon Law was never received into *England*, that prohibits Bishops to judge in capital Causes : That the Bishops have declined to assist in pronouncing the Sentence of death, sometimes as undecent for their Order ; but notwithstanding, and without being contrary to the example and practice of their Predecessors, the Bishops may judge upon the Plea of the Earl of *Danby's* Pardon. For that if they do judge the Pardon not good, the Earl is not therefore to be condemned. And for the better clearing the Bishops Right, and for the establishing the Government, we shall prove that the Spiritual Lords are Peers of the Realm, and one of the three States,
and

and an essential part of the Government, which no legal power can charge or alter. Lastly, we shall repel the calumnies of the Adversaries in this cause, by which they endeavour to render the Prelates unworthy of their Right, and to put them amongst the *prodigi & furiosi*, that are scarce allowed to be Proprietors of their own. And conclude our Discourse with a just Apology for the Lords the Bishops.

C H A P. II.

ANd First I begin with the *Octavo*, which in the Introduction to his Precedents saith, That he will not meddle with the General Question, How far forth Clergy-men in Orders are forbidden having any thing to do with secular matters, nor what in that particular the Imperial Law requires, as that Rescript of the Emperor *Honorius* and *Theodosius*, which Enacts that Clergy-men shall have no communion with publick Functions, or things appertaining to the Court; or the Decree of *Justinian*, That Bishops should not take upon them so much as the Oversight of an Orphan, nor the proving of Wills: saying, It was a filthy thing crept in amongst them, which appertained to the Master of his Revenue. Nor what our common Law of *England* seems to allow or disallow, having provided

vided a special Writ in the Register upon occasion of a Master of an Hospital, being it seems a Clergy-man, and chosen an Officer in a Mannor, to which that Hospital did belong, saying it was, *Contra Legem & consuetudinem Regni, & non consonum* ; It was contrary to the Law and Custom of the Kingdom, and not agreeable to reason, That he who had cure of Souls, and should spend his time in Prayer, and Church duties, should be made to attend upon Secular employments. I meddle not neither saith he, with what seems to be the Divine Law, as having been the practice of the Apostles, and by them declared to be grounded upon reason, and to be what in reason ought to be ; which was this, That they should not leave the word of God and serve Tables, though that was a Church Office ; and yet they say it is not reason we should do that, for their work was the Ministry of the Word and Prayer, much less then were they to be employed in secular affairs. This with great skill he prefixes to his precedents (which make the Law of Parliament, which is the Law of the Land he saith) and after he had said all that he could to make the very pretence it self unlawful, and to perswade the shutting of the Bishops out of the House, for altogether, he subjoyns his Precedents: he thought certainly that when he had placed the Precedents in such a light, they must look all of that colour, and have that appearance, which he indeavours too by other arts to give them.

But

But we shall spoil his design in a very few words, which the observant Reader will apprehend, how pertinent it is, and satisfactory to what is objected in the recited Preface, though we do not for brevity sake apply our answer to every particular of his Discourse.

We say therefore we can't think the Clergy fit for Proctors, Publick Notaries and Scriveners, or Ushers of Court, or other subservient offices ; nor fit to make Constables, Tythingmen, and Scavengers ; nor to keep watch and ward, and to be a Hayward or Bayliff of his Worships Mannors and Townships : Or that they should be Merchants or Farmers, or interpose in any Secular affairs for gain : That it was declined by the Pastors and Teachers of the Church, as an indignity for them to administer to Tables, *i. e.* to the Provisions of Charity in their Church-feast, and they ought to keep far off from a suspicion of filthy Lucre ; nay, not to preach principally for gain, or make a gain of Godliness : By the Imperial Law accordingly, they were discharged from the trouble of being Tutors and Curators of Orphans ; nay, where the Law had designed them that care by their relation to the Orphans, out of respect to their dignity they were discharged by the Law, that they might not incur unkindness to the neglect of their relations, nor yet be incumbered with such private attendances to divert them from their great Cure. Though the Presbytery might

might be admitted *ad Tutelam Legitimam* by their own consent, and this was made Law by *Justinian, Cod. L. 1.* By which Law it appears not a Judgment of Incompetency in Clergy-men, to intermeddle in Secular affairs ; but an honourable exemption of the Bishops from such private concerns, was the reason of that Law.

It was further provided by a Law of *Justinian, Cod. L. 1.* That Priests should not be made of Court-Officers, but those that were so made might continue, the reason of the Law is contained in it ; because that such a man was *Enutritus in Executionibus vehementibus seu asperis & his quæ ex ea re accidunt peccatis. Non atque æquum fuerit modo quidem & illico esse Taxeatam & Buleatam & facere omnium acerbissima; mox autem Sacerdotem ordinari, & humanitate & innocentia exponentem dogmata.*

In all this the honour of the Church was consulted ; But business of weight and trust was committed to them : *Valent. Valens* appointed Bishops to set the price of goods sold with this reason, *Negotiatores ne modum mercandi videantur excedere, Episcopi Christiani quibus verus cultus est adjuvare pauperes, provideant. Justin. 79. Novel,* submits Monks to the Jurisdiction of Bishops *Novel 83.* he decrees the like for Clerks, as well for matters Civil, as for Ecclesiastical Crimes, reserving others to his officers ; and furthermore, in case the Bishops cannot or will not take cognisance of them, he refers them to his Magistrates.

Nay,

Nay, the Emperours proceeded further, and did give Jurisdiction to Bishops, not only over Clerks, but also over Laymen. *Constantine* the Great (whose Law the Canonists ascribe to *Theodosius*) made a very favourable constitution in behalf of Bishops ; whereupon he gives them the Cognisance of all civil Causes betwixt Laymen, upon the bare demand of one of the Parties, albeit the other did not consent unto it, in such sort as the Magistrates are bound to desist from the Cognisance of it, as soon as one of the parties shall require to be dismiss and sent thither, whether it be at the beginning or middle or end of the suit.

Arcadius and *Honorius* derogating from this Law, will have it to be by the joint consent of both parties, and that by way of Arbitrement.

The same Emperours together with *Theodosius* do ordain, That there shall be no appeal from the Episcopal Judgment, and that their sentence shall be put in execution by the Serjeants and Officers of the Judges.

The two last, *Justinian* would have to be observed ; for as for that of *Constantine* he did not insert it in his Books, which *Gratian* hath confessed in his decrees : and whereas in the Code of *Theodosius*, the inscription of the Title runs thus, *De Episcopali Judicio* ; *Justinian* instead of it hath put *De Episcopali audientia*, to shew that it is not properly any Jurisdiction that is bestowed upon them,

them but a friendly and arbitrary composition to abridge process.

After this the Emperor *Charles* the Great in his Capitulary renewed the Law of *Constantine*, and gave the same jurisdiction therein contained unto all the Bishops, repeating the same Law, word for word; which the Popes have not forgot in their Decrees, where they have inserted the Constitution of *Constantine* under the name of *Theodosius*, just as *Justinian* did in his Books, the Responses and Commentaries of Lawyers to give them the strength of a Law.

But I know there is a Question made by very Learned men, Whether that Law of *Constantine* is not supposititious? But whether it be or be not, we have alledged enough without it to prove that Christian Emperors, and the ancient Christian Church was not of the opinion of this Author, and that his Citations so much as they are true, are nothing to his purpose; The cause or reason of those two Laws expressed in the Laws are, For that the authority of Sacred Religion invents and finds out many means of allaying Suits, which the Tyes and Forms of captious Pleadings will not admit of; That the judgments of Bishops are true and uncorrupted; That this is the choaking of those malicious seeds of Suits; To the intent that poor men intangled in the long and lasting snares of tedious Actions, may see how to put a speedy end to those unjust demands which were proposed to them.

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But the Pope his Decretals, the Court of *Rome*, and other Ecclesiastical Courts are of old complained of, as the source of Iniquity and injustice, and of all the shufflings and tricks that ever could be invented in matter of pleading, and that all Papal Christendome hath groaned miserably under them ; and I wish that we may never hear duly of any such complaints of our Ecclesiastical Courts.

It is worth observing how the Church and Common-wealth did Actions contrary to each other in pursuance of their several interests. The Common-wealth endeavour'd to engage Bishops in the highest secular affairs and in their supream Judicatures, and so the people would have it, not doubting of such administrations as they might fairly expect from the Bishops ability, Authority and Religion. But on the other side the Church did as much decline them as she could, and so far as she might, she used her Restraint only in prohibiting them from meddling for their own private gain in Temporal affairs. *Can. 14. Arles, clericus turpis lucri gratia aliquid genus negotii non admittat* : but they did not take from them all opportunities both of doing good to their people and securing the Secular power (of which they became part) to their own assistance, and without refusing their services to the Prince when required: from which practice of the Church, the Pope took advantage
to

to put his peremptory restraints upon the Bishops and Clergy from intermeddling in Secular affairs to make them the more submitted and dependent upon himself, the better to arrive to his Ecclesiastical Monarchy. The Dignities and favours that Bishops received at the Courts of Princes, was the envy of the Pope, and matter of quarrel against them; and *Petrus Bliffensis*, upon such an occasion makes an Apologie to Pope *Alexander* the Third, in an Epistle writ in the Name of the Arch-Bishop of *Canterbury*, in defence of the Bishops of *Ely*, *Worcester* and *Normich*, who attended then at Court upon the service of the King: which because he hath been an Author produced by the other side in this Cause, and because what he says for their being admitted into the Councils of Princes, contains so many advantages to the Church and State, I shall here transcribe; *Non est novum quod Regum Conciliis intersint Episcopi, sicut enim honestate & sapientia ceteros antecedunt, sic expeditiores & efficaciores in Reipub. administratione censentur; quia sicut scriptum est (minus salubriter disponitur regnum, quod non regitur consilio Sapientum) in quo notatur eos consiliis regum debere assistere qui sciant & velint & possint patientibus compati, terra ac populi saluti prospicere erudire ad justitiam Reges, imminentibus occursum periculis, vitæque maturioris exemplis informare subditos, & quadam Authoritate potestativa præsumptionem malignantium cohibere.* He proceeds in his discourse,

and brings the examples of Samuel, Isaiah, Elisha, Jehojada, Zachary, who were Priests and Prophets respectively, and yet imployed in Princes Courts and Councils of Kings, and adds, *Unum noveritis quia nisi familiares & Consilarii Regis essent Episcopi supra dorsum Ecclesie hodie fabricarent peccatores, & immaniter & intolerabiliter opprimeret Clerum presumptio laicalis*: then he adds advantages to Religion and policy hereby, *Istis mediantibus mansuescit circa simplices judicarius rigor—admittitur—clamor pauperum, Ecclesiarum Dignitas erigitur, relevatur pauperum indigentia, firmatur in Clero libertas, pax in populo, justitia libere exercetur, superbia opprimitur, augetur laicorum devotio, religio fovetur, diriguntur judicia.*

It is well known (and I will not be so impertinent as to go about to prove) that the chief Ministers of Religion have been the greatest men in Civil Government in all Nations, and in all Religions as well as in ours; and as certain it is, this Author will never find reason or precedent of Authority or weight enough to perswade the contrary; or an alteration therein notwithstanding that complaint which he tells us was made in the 45 of E. 3. fol. by the two Houses, Counts, Barons, and Commons to the King, how the Government of the Kingdom had been a long time in the hands of the Clergy; *Per cet grant m schiefs & dammages sont avenuz en temps passe, & plus parroit eschire en temps avenir, al disberison*

son de la Couronne & grant prejudice du Royaume :
 Whereby great mischiefs and damages have happened in times past, and more may fall out in time to come to the disherison of the Crown, and great prejudice to the Realm. And therefore they humbly pray the King that he would imploy Laymen ; This they had too much reason to desire then, when the Pope had advanced his Authority over them, and put them under Oaths of Canonical obedience, which rendred them less fit to be intrusted in the Government of this Kingdom, who were become Subjects of another Empire, usurping continually upon us ; which will never be our Case again if the Bishops can help it.

C H A P. III.

ANd now we proceed to the *Præcedents*, of which the *Octavo* Book principally consists, which seem, as that Author and the other in *Folio* would have it, to be not only a discontinuance of the Right of the Bishops to judge in Capital Causes, but an argumentative proof that they never had any ; because it can as they say be never proved to be otherwise. Immemorial time I confess is a great evidence, of the right whether *In non user* or *user*, and a fair reason to allow or deny the pretence ; and therefore we

will now consider the Precedents : As for the argumentative and discursive parts of those books they will fall in to be answered by way of Objection, when we are discoursing and proving the affirmative part of the Question, and will best be reprov'd by being placed near the light of our reasons for establishing the Right of the Prelates.

If we do not give some satisfaction to these Precedents, whatever we shall say, I know can signifie no more than an Argument to prove a thing not true, which is possible, & *de facto*, testified by unexceptionable witnesses ; for such the Precedents will be taken until exceptions are made to their Testimony.

The Precedents produced by the two Authors are mostly the same, only the *Octavo* hath more than what the *Folio* Book hath recited.

The first case that the *Octavo* produceth against the Lords Spiritual, their Right of being Judges in Parliament in Capital Causes, is that of *Roger Mortimer* Earl of *March*, *Simon Beresford* and others (who were no Peers, and yet tryed in Parliament) and no Bishops present ; and we agree it probable for his reason, because there is mention made of Counts, Barons, and Peers, and Peers being named after Barons could not comprehend the Bishops. And because we think it reasonable, when the orders of that House are particularly enumerated, that the order omitted should be intended absent ; but we will

will not allow but that Peers is, and so is Grants comprehensive of Bishops: Nor will we when the entry is General intend the Bishops absent, except he cannot otherwise prove them absent, which we mention in the entry once for all, as just and common measures between us in this dispute. It will appear true what we affirm of the words, *Peers* and *Grants*, by what follows: And if we should not insist upon their being present, when nothing appears to the contrary, we should do wrong to the Cause.

But to come to the consideration of this Precedent: Is this a just Precedent? Is not *Magna Charta* hereby violated? Are not the proceedings altogether illegal? Here are Commoners tried by Peers in Parliament. It is well known, that the high displeasure of the King was concerned, and that he did interpose with a plenitude of Power in this particular case against the fundamental constitutions of the Government; the greatest crime of this Earl was too much familiarity with the Kings Mother, Indignation and Revenge and not Justice formed the Process, It was proceeded to condemn him *Judicio Zeli*, upon pretence of the Notoriety of the fact.

Sir Robert Cotton in his abridgment tells us *Anno 4. Ed. 3.* That the King charged the Peers (who as Judges of the Land, by the Kings assent adjudged) that the said Roger as a Traytor should be drawn and hanged. The Bishops were not present, certainly they were none of the

Judges that gave Judgment as the King pronounced without Cognifance of the Cause; The King had more Honour for their Order, than to call then to fuch Drudgery and fervice of the Crown: The iniquity of the fentence appears by the reverfal thereof in Parliament, 25 *Ed. 3.* in which the Original Record is recited: Sir *Robert Cotton* in his Abridgment tells us, That this Earl being condemned of certain points whereof he deferved commendation, and for other altogether untrue furmifes, there was a Bill brought into the Lords Houfe for the reverfal of the Judgment, and it was reverft by Act of Parliament; indeed it could not be otherways reverft: for no Court can judicially reverfe their own Judgment; for Error in Law and Judgment in the Lords Houfe, (being the *dernier Refort*) cannot be repealed, but undone it may be by themfelves in their legislative Capacity. Here faith the *Octavo*, the Bifhops were not prefent at the paffing of that Bill, but yet the *Octavo* Gentleman will not pretend that the Bifhops are to be excluded in any Acts of Legislation. Why therefore was he fo willing to impofe upon the people fo falſely, and unrighteouſly, and to produce this as a Precedent againſt the Bifhops Right of Seſſion in matters of that Nature, by himſelf recognized? There is nothing can excuſe him herein, for he is certainly ſelf-condemned of undue Art in thi matter.

In 20 *R. 2.* the Caſe of Sir *Thomas Haxey* happen'd,

happen'd, which the *Octavo* book (page 20) produceth against us. He was forsooth condemned in Parliament, for that he had preferred a Bill in the House of Commons, for regulating the outrageous Expences of the Kings House, particularly of Bishops and Ladies. *Haxey* was for this tryed, and condemned to death for it in Parliament. And here appears to be no Bishops, and there ought not to have been any for these reasons. First, that the Bishops were the parties wronged, and therefore could not in any fitness give sentence; But Secondly, (if that was not in the Case) that that caus'd the process was Royall anger upon a great faction of State, (in which I believe the Bishops were not engaged) made for deposing of *Rich.* the 2d. that was understood by the King to be in acting, and promoted by Sir *Thomas Haxey* by his Bill. It was this made the sentence altogether abhorrent from legal justice in matter and form. Here was a Tryall of a Commoner by Peers, a matter made Treason, that did participate nothing of the nature of Treason. But the discreet Gentleman will take notice of nothing that is faulty in this Case, but that this proceeding tends to abridge freedom of speech in Parliament, which he loved from his youth, which we do not blame in him: As he did also to talk against Bishops, which he cannot depart from, when he is old. But in the first of *Hen.* 4. this Judgment of *Attainder* was repealed and annull'd, as he himself tells

tells us *Fol. 25*. And here the Lords Spiritual were Judges, which must be remark't for the honour of their Order, that though they were the *pars lesa*, by that fault, such as it was; yet notwithstanding they concurred readily to the repealing the Judgment.

But by this it appears that the Bishops did agreeable to their rightful Authority, sit in Judgment in Parliament in capital Causes; and therefore in consequence, because it is a Case of his own production, he ought to allow that the Bishops might have had Session in the Repeal of the Attainder of *Roger Earl of March*, if it had been, or could have been repealed by Judgment, or a judicial Act of the Lords House.

For will this renownedly wise-man, for avoiding of this his own testimony which he hath justly produced (though it proves to testify against himself) say, that the Bishops can be present at repealing of a Judgment of Condemnation, but not present at confirming any?

Doth not it, in this proceeding come before them in Judgment, and consideration, Whether the sentence shall be repealed or affirmed, and is not this with a witness, a question of blood? The Judgment being upon an appeal or review must be final, peremptory and decretory, and is more a question of blood, than the Cause can be reckoned and deem'd to be upon the first Instance. Or doth he think fit that there should be two
sorts

sorts of Judges appointed, a hanging Judge, and a saving Judge; if he doth, I am sure he will not be able to find an employment for a just Judge.

So that, I think, to all men that can consider, we have sufficiently vacated that testimony, that the Cases of the Earl *March* and *Haxeys* seem'd to give against us, and they are fairly come over to our side. And we have provided herein sufficiently for the recovering of all men into an indifferency against the Prejudices, this *Octavo* by its great Esteem hath done to their Judgments.

The Third Precedent is, 15 E. 3. That Parliament was declared to be called for the Redress of the breach of the Laws, and of the Peace of the Kingdom, and as the *Octavo* hath it *Fol. 8.* because the Prelates were of opinion, that it belonged not properly to them to give Council about keeping the peace, nor punishing such evils; they went away by themselves, and returned no more (saith he) but that is out of the Record, (so ready this Authour in *Octavo* is to shut them out of the House;) but I pray would not the Temporal Lords, if the King had consulted the Parliament in matters Ecclesiastical, have in like manner departed, but would such departure of the Temporal Lords exclude them from having any thing to do in the Affairs of the Church; Why then are the Bishops treated in their Right so unequally?

And

And this must serve for an Answer to the *Folio*, p. 17. where he is very large in reciting Records of process, and Proclamation against the Earl of *Northumberland*, agreed only by Lords. If a Liturgy, or book of Canons were to be established by Law, the Bishops certainly would have the forming of them. The *Octavo* saith, that Commissions were then framed by the Counts, Barons, and other Grants, and brought into Parliament; but no Bishop was present, so much as to hear the Commissions read; because they were to enquire into all Crimes, as well Capital, as others. And for affirming this (for all that can appear to us) he only consulted his Will and pleasure like an honest man, to the cause he defends, for he hath not told us from any Record, what the Nature of these Commissions were. But we observe, that though this Parliament was called for matters of the peace, yet the Bishops had their Summons, and it was not a Parliament *excluso Clero*. The Bishops it seems upon the opening of the Parliament, and the causes of convening, modestly, it seem'd, declared that they were not competent, as not perhaps studied in Pleas of the Crown, or perhaps had not been so observant in fact, of the matters of grievance. What harm in all this? they that cannot propound may judge of Expedients propounded, and so did they; for it doth appear by the Record 6 E. 3. N. 3. that the Results of the Temporal Lords were approved in

in full Parliament, by the King, Bishops, Lords and Commons, which the *Folio* agrees. But it seems modesty is a dangerous thing; and not to be forward to judge and determine, though the matter be not understood, may be a good Cause to turn a Judge out of his Office, and forfeit his Judicature. Besides, the principal business of this Parliament was Legislation, in which the Prelates have an undisputed Right of Session, and may they not advise upon what they make into a Law? May not they consider of the matter that is to pass into a Law in all the steps it makes?

But it is admirable what the *Folio* Book saith, viz. that by this Record it is evident that the Prelates have no judicial power over any personal Crimes, which are not Parliamentary (I suppose he means Crimes not debated in Parliament) This doth very much fortify the foundations and grounds of his discourse. What are the grounds of his discourse, I shall never be able to find out, except it be an over-weening Opinion of himself to meddle with these matters which seem too high for him; and to which the reading of my Lords *Cooks* Institutes, and the broken Commentaries of the Law, will never render any man competent.

Its true the Bishops have never any power and Cognizance of any Causes, except they are commissioned thereto, out of Parliament. But as true it is of the Temporal Lords; and therefore
whatsoever

whatsoever advantage this will do his Cause, with all my heart let him take it.

The next Case produced as a Precedent for them, is the Case of Sir *William de La Zouch*, and Sir *John Gray*, for a quarrel in the Kings presence; they were both committed to the Tower, and after brought into Parliament, no Bishops there.

It is a Case that could not be judged there, neither was it; but one of them was discharged, because no probable matter of offence against him, and the other remanded to the Tower, (I suppose) to be proceeded against as the Law required. Is this cause (I pray) to his purpose? have not the Prelates judgment in causes of Trespas, that properly come before that House by his own Confession? And yet the *Octavo* remarks here, that no Bishops were present to judge so much as of a Battery; though the Record warrants him to say only an Assault. But out of his great sincerity, and to make a Precedent where he could not find one for his turn, he foists a Battery into the Case, hoping that then the forward Reader would supply the Rest, and smell blood in the Case, which must be interdicted to a Bishops Cognizance.

But observe what an aking-tooth he hath against the Bishops Right; for he could not but have in his mind, what almost immediately after, he writes down in his *Octavo* (*viz.*) the Case

Case of Sir *John Lee*, 24 E. 3. and of several persons 50 E. 3. and 51 E. 3. censured in Parliament, by Bishops for misdemeanors. And he saith well they might ; which certainly together with the Case of *Michael de la Pooll*, 10 R. 2. he troubled himself to transcribe, to make a shew of Number and false musters, a sleight that must not pass upon the people, and a Stratagem that will never get him any advantage towards a Victory.

We omitted to consider the Case of Sir *William de Thorpe* 50 E. 3. as it lies in order in his Book, because we thought it more expedite to examine those that spake to the same thing together, but now we will examine it. The Record of a Judgment of death against him for Buggery, was brought into Parliament, saith the *Octavo* ; in full Parliament saith Sir *Robert Cotton*, and the King caused it to be read before the Grants in Parliament : The Bishops (saith the *Octavo*) could not be there, because this was no imployment for them ; and thus he proves his cause, it was so, because it was so. And for want of proof concludes he hath a very good Cause : But he knows if he would tell us the truth, that a full Parliament doth include Bishops ; that the Bishops are truly Grants and so called, that the Bishops could not vanish away, at the putting of the question. But we should have had a most famous Record of that story and wonderful Accident.

The

The Cause of *William de Weston* and *John de Gomenits* 1 R. 2. was for traiterously surrendring Towns and Castles in *Flanders* to the Kings Enemies. And the question was, whether they behaved themselves well in their defence, and did therein like valiant and faithful Commanders; Whether the Towns could be preserved against the strength of the Enemies that did attach them. Indeed not a very proper question for a Bishop to determine: The Examination of the Charge and defence was committed to several Lords Temporal, named in the Record; But it must be observed, though these Lords managed the Cause, found the Towns upon Examination, not of necessity, but willfully delivered, and agreed what Judgment should be pronounced against them: Yet observe their Answers were put in full Parliament. When the Judgment was pronouncing, there was likewise sitting a full Parliament, which the *Octavo* doth wilfully omit. And the Record further saith, that they were brought before the *Seigniors* in Parliament, *Friday* the 27. of *November*, and again, before the said Lords, *Saturday* the 28. of *Nov.* That all this while in the Record, there is no mention of the Names of any particular Lords, so that we hear nothing yet in the Record, but of a full Parliament, *Seigniors* in Parliament, which are the most comprehensive terms, and can, and do include Bishops, and strongly intend them included. He that saith all, excepts none,
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the Record saith, that when the Judgment was to be pronounced, *Les Seigniors dudit Parliament cestascavoir*, and then names the Duke of Lancaster; Earls of Cambridge, March, Arundel, warwick, Stafford, Suffolk, Salisbury, Northumberland, Lord Nevil and Clifford; and other Lords, Barons and Bannerets being then in Parliament, had met and advised upon the matters before. These Lords agreed it seems the Judgment for the whole House, and it was pronounced in full Parliament; and that in the Names and Authority of the whole Parliament. Pray let it be observed, that when the Record speaks of Seigniors, in the first part of it, no Lords are named, and so all intended; when afterwards he mentions the Lords, the Record saith *avantdits*, or foresaid Lords, and no Lords named yet, so that all the Lords of Parliament are then likewise included: But when he names the Lords that had advised, there is no *avantdits*, or aforesaid. Though the *Octavo* puts the *avantdits*, or the aforesaid to the named Lords, to the purpose, that it may seem, that no Lords were present in this Cause before in Parliament, but those named and mentioned, amongst the which there were no Bishops, against the Faith of the Record. To the Record I appeal. *Rot. Parl. 1 R. 2. Mem. 5.*

The next is Sir Ralph Ferrers his Case, 4 R. 2. He was brought into Parliament, and there tried for Treason, in holding intelligence with the

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French.

French. The Entry is, *It seem'd to the Lords of the Parliament, that the said Sir Ralph was innocent.* This testimony too is *argumentative*, and concludes Bishops not there, because not expressly mentioned, as they were in *Alice Perries Case*, 1 R. 2. I never could have a good opinion of a cause, that hath nothing but *argumentative* proofs, for this reason; because there are more things possible than ever happen'd; but a reasoning Witness is always accounted a willing Witness, and therefore a Witness *suspecta fidei*; but most certain, a Witness with a reason His testimony is no better than his reason. But I pray must the Entries of the Clerks be so nicely weighed? Are they so oracularly penned, that every *iota* of the Journal must comprehend a Mystery of State, and carry in it the very constitution of the Government? must that be such and no other, than short or large Entries make it? Must a Criticism upon the Clerks form of Entry alter and refix the Government? must it change and be ambulatory at the haste or leasure, the short or more large Entry of the Clerk? Did ever any wise man, before this Criticiser, ever determine questions of the greatest moment upon such trifling considerations? or suspend the most *momentous concerns* of a Nation, the very Government it self, upon such a very slender thread? But to leave no scope for such Cavillations, we will turn him to the *Parl. Rolls* of 14 E. 3. Were not the Grants the Bishops, as
well

well as the Temporal Lords? Are not both Bishops and Peers called Seigniors? Are not Seigniors and Grants of the same import? And as certainly this *argumentative* testimony makes no credit to the Cause, nor to the Author of the *Octavo* who produc'd it.

The next Case is of the Bishop of *Norwich*, 7 R. 2. who is brought to Judgment in Parliament, amongst other offences, for betraying *Graveling* to the French, which was Treason. And this cause the Record saith, was heard before the Lords Temporal: And here I will agree that the Bishops were not present, but I will not allow that they were excluded. And if that addition of *Temporal* had been to the Seigniors in Sir *Ralph Ferrers* Case, or to the Grants in Sir *Wil. Thorp*, I would have allowed the Bishops in those Cases not present likewise. But why I pray may it not be with as much fairness concluded that the Bishops were present (because the addition of *Temporal* is not made to Seigniors and Grants) in the said Cases of Sir *Ralph Ferrers*, and Sir *Wil. Thorp*, as it can be that they were absent in the hearing of the said Cases, because the word *Prelate* or *Bishop*, is not in those Entries expressed? If he will be just and change the Tables, He must yield us the Argument, for he knows that there is no establishment in the *Modus tenendi Parliamentum*, directing the Forms of Entries, or any *solemnnes formula*, whose import and value is ascertained

and made indisputable, but are to be expounded by an easy interpretation ; such as we use, when we make fair constructions in common speech. But to give this another Answer, The Arguer is herein guilty of that fallacy which they call *μετάβασις εἰς ἄλλο γένος*, or *non causa pro causa* ; And his Witnels doth not speak *ad idem*. The Bishop was an Ecclesiastical person, and though the Bishops might try a Temporal Lord for the same offence, yet they would not consent to try a Bishop, and forgo that great priviledge of the Clergy, with so much earnestness defended in that Age, to be exempt from *secular Judicatures*. They would not be present to try, because of the person of the Defendant, which cannot be drawn into Argument to prove that they had no cognizance of the Cause with any fairness.

But further the *Octavo* doth afterwards produce a Testimony that doth contradict this last Testimony in the point for which he produc'd it. It is the Case of *Thomas Arundel* Arch-Bishop of *Canterbury*, 21 R. 2. The Bishops pronounced Judgment against him in Treason by their Proxy. They can it seems upon great Reasons wave that priviledge, and submit a great Malefactor of their own Order to Justice, as they did in the Case of *Becket* heretofore. So that you see here, they used a Jurisdiction in a Cause of Treason in the Case of *Thomas Arundel*, which the Bishops could not have used without a
Right;

Right ; And the Case of the Bishop of *Normich* is only an omission consistent with a Right.

The Case of Sir *William Rikehill* is next in order, who was sent by R. 2. to *Calais*, to take the Confession of the Duke of *Glocester*, who soon after was Murdered. The Judge was arrested and brought into Parliament before the King, Lords Spiritual and Temporal and Commons ; the whole matter was examined, and the Judge was examined. Here is likewise a clear Case for the Bishops, an Instance wherein they did take cognizance of a Capital Cause in Parliament. But the *Octavo* hath a Shift for us, and says that there was no impeachment or charge against the Judge, and so the Bishops might be present at his Examination. Let the Reader here observe the sleights, wriglings and prevarications of this *Octavo* Author ; Whatever the World thinks of this Author, I am much dissatisfied about him, and cannot believe him a man indifferent and impartial in this Enquiry.

In his observations of the Parliament of the 15 E. 3. the Bishops he saith vanished like lightning, they went away immediately at the opening. That *matters of the Peace* in general were to be treated of (wherein Blood and Member might not at all be concerned, for all that appears.) They went away and (as he would have it) they returned no more : and they must not hear so much as a Commission of the Peace read.

But here in this Case of *Rikehill* they may examine a Murder. He will say (I am sure) that though the Bishops did examine it, they could make no judgment of the matter. But who will believe him? In the Case of *de la Zouch* and *Gray*, he observes that Bishops could not be present so much as at a Battery, though there was no Battery in the Case, and yet he allows them to judge of all misdemeanors in the same little Book.

I observe but these things, of many more of like nature, which the Reader may observe of himself, in that little *Octavo* ; that the World may judge, how unjustly he deals in this Cause : with what iniquity and prevarication he manages a noble question of Right concerning the Government of the Kingdom. With what petulancy, spight, and inveterate displeasure, he useth the Bishops. That he is grinning at them, whetting his teeth, and squinting upon them perpetually with an evil Eye. He oppugns their Right with Cavillations upon the Clerks Entries, with what is in the Record, and what is not, and what he is pleased to add of his own upon them, and with Precedents that reprove one another. Had it not been more fair for him to have stated the Right upon a probable result of all the Records considered together, than to make their Right sometimes more, sometimes less, sometimes to affirm, sometimes to deny their Right, in the same little *Octavo* ?

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He cannot sure think that every Judgment that hath been given upon deliberation in the greatest Judicature, can uncontroulably make the Law ; much less a Fact, much less an Omission, a Negative that can operate nothing. If nothing be Law but what hath always and constantly been done in the same manner and form, and all circumstances the same, as this Author it seems would have it ; and nothing true Theology (according to *Vincentius Lirinensis* his Rule) but what hath been received *ab omnibus, ubique & semper*, We can have no Law, nor no Theology. Vain and idle opinions must be discharged, such as can have no consideration with wise men ; and the Law must be declared by the Nature of Government, reason, and the general order of things. But we have made too long an Excursion, We must return to a further consideration of *Rikehil* his Case.

And now I submit it to any impartial man, whether the Judge could be arrested and brought under an Arrest into the Parliament, and be examined and not accused.

The very next Case he recites is that of *John Hall*, in which we find nothing but an Examination and confessional ; upon which he was condemned as a Traytor. And so would it have fared with Sir *William Rikehil* without doubt, if he had been guilty and had confessed. Neither the *Octavo*, nor Sir *Robert Cotton* mentions any formality more against the one than the other.

The House of Lords are not tyed to Formalities in their proceedings like other inferior Judicatures: and the more inferior any Court is, the more regular forms are exacted, and that with great reason, which we will not hear treat of. Besides, in the Case of the Earl of *Northumberland*, recited in the *Ottavo* Book Fol. 34. in 5 H. 4. a Judgment was given against him for an offence upon a petition, which he exhibited for a pardon of the same offence.

But in the Case of the Earl of *Northumberland*, I pray observe what the *Ottavo* saith in reference to our question. After he hath recited part of the Record in these words; [The petition being read and understood, the Lords as Peers of Parliament, to whom such Judgment doth of Right appertain, did give their Judgment] He concludes that the Bishops could not be said to be his Peers, which shews they were not there. But he must give us leave with much better Logick, to conclude, that they were present; and We with reason presume, because they are Peers of Parliament (for so the Record is, not *his* Peers, for he fallaciously changeth the Terms) they were there, except he can prove them absent, if common Right is not Reason of presumption, no presumption can be reasonable. But we can prove to him they were there. And thereby in consequence, we have another proof that they are Peers.

Sir

Sir *Robert Cottons* Abridgment tells us § *H. 4. Fol. 426.* that at the same time the Arch-Bishops and Bishops, at their own request, (and therefore certainly then present) were purged from suspicion of Treason by the said Earl. And at the same time, I pray observe, Sir *Henry Piercy* his levying of War was adjudged *Treason* by the King and Lords in full Parliament. Note, that here is said to be a full Parliament, and yet nothing in the Entry, but the stile of Lords. So various and contingent in respect of form are the Entries; which ought to be observed.

But to review and consider again the Case of *John Hall* condemned in Parliament for Treason, for murdering the Duke of *Glocester*. And to this place I have reserved the Case of the two Merchants that killed *John Imperial* an Ambassadour of *Genoua*; for both Cases are of the same nature, and must receive the same answer; and that is this. The Statute of the 25 *E. 3.* was made to declare certain matters Treason, and to be so judged in ordinary Judicatures: but withall that Statute did provide, that if any other Case, supposed Treason, do happen, it shall be shewed to the King and Parliament, whether it ought to be judged Treason. Concerning which the King and Parliament do and are to declare by their Legislative power, as it is agreed by all, and as they did in the Case of *John Imperial*, as appears by that Record expressly. So that though the Bishops were not present at the Judgment of
John

John Hall, they might have been (it must be confessed by our Adversary) if the Judgment against *John Hall* was by the Legislative Power, as it must be. By this it appears how false an Argument this of his is, To conclude no Right from absence ; for it is plain, here it proves too much, it proves a thing notoriously false, a thing false by the confession of our Adversary : and from what any falshood may be inferred, is not it self true, but stands reprov'd by the falshood and absurdity of what follows in consequence thereof. But this is too Solemn a Reproof of so frivolous an Argument, for it is no more in effect than this : That no man can have an Authority, but what he is always in the exercise of.

The *Octavo* goes on, and remembers that in the 2 *H. 4.* the first Writ *de Haretico comburendo* was framed by the Lords Temporal only ; and without question it was so. For the order of proceedings in Case of Hereticks Convict, so required it. The Bishops are upon the Matter, the *pars laica* in Heresy. The authority of the Church is therein offended, and it was not therefore proper for an Ecclesiastick to be an Actor therein.

The Author doth improve this, as he doth all things that he can with any manner of colour, to render the Order of Bishops hated, and disesteemed, which is the publick establishment, the legal provision for the Government and guidance of Religion. What mischief then is he a doing?

How

How great is his fault to deprave that provision, to destroy their Reputation and Esteem with the people, to destroy all their authority as much as in him lyeth? His utmost endeavours are not there-to wanting, to make their Ministries useles, and to frustrate the provisions of the Law, and the care of the Government, in the highest concernment of the Nation. Doth this become a great man? I will not say a good man? God rebuke him. To lessen the Authority, and disrepute and dishonour any Order of men, or any Constitution, that can be any ways useful to the publick, is a great fault: but this of his, is a most enormous offence.

But what can be inferred from hence against the Order of the Bishops, may be with like unworthiness inferred against the Christian Religion it self. For it may be as well concluded, that the Christian Religion is a bad Religion; for that men of that denomination in the general Apostasie, by pretence of Warranty from that Religion, though it gave none, murdered innocents: As that the practices of the Bishops of that Religion so depraved, do reflect any dishonour against the Bishops of reformed Christianity. And this Answer will suffice too for the Case of Sir John Old-Castle.

As for the Earls of *Kent*, *Huntingdon* and *Salisbury*, the Lord *le Despencer* and Sir *Ralph Lumley*, before that, executed and declared Traytors in Parliament by the Lords Temporal only, in the

the Parliament of the 2 *H.* 4. and the Earl of *Northumberland* and Lord *Bardolph*, against whom it was proceeded in a Court of Chivalry after their death, who were declared Traytors after they were dead, in the Parliament in the 7 *H.* 4.

I hope the *Octavo* Gentleman, and all that are at present of his Opinion, will take this for a sufficient Answer (if we had no more to say) that it was irregular, very irregular indeed, to condemn men after they were dead; when he himself would set aside the Authority of the Case of *William de la Poole* in 28 *H.* 6. in Parliament where the Bishops were present: which though he saith is the sole single precedent of Bishops acting in Capital Causes, We shall therein convict him to be a man of Will, to have lost himself in his passions, and his *δίνον σοφία*. And enter that Case with a cloud of other testimonies and reasons that affirm, I will not stick to say, demonstrate, (so as such matters can be demonstrated) with a moral demonstration, such as shall leave no doubt with any man, of the Bishops Right of judging in Capital causes in Parliament.

But We shall further add for Answer that the Temporal Lords did not herein exercise the Office of a Judge. For it could be no Judgment they delivered. It was only an officious declaration, an avowing of the justness of the slaughter of these great men, and to enter themselves of the other side. But is it as reasonable for this
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Writer, to fore-judge the Bishops of their Franchise, and to have it seized, because they would not be guilty of a misuser thereof, and would not consent to so insolent a thing as to judge men unheard, nay when dead, and they could not be heard? And to kill over again the murdered Lords, for so they are in consideration of the Law, who are not by legal process condemned and executed.

I cannot but observe in many of the great convulsions of State, and the *simultates* amongst the Great men, and extravagant excesses of injustice, to the glory and honour of the Bishops it must ever be remembred, that they did preserve themselves from being ingaged in such violences as were committed against the last mentioned Lords.

But that the Author of the *Octavo* should produce the Case of Sir *John Mortimer* against us, who was condemned upon a bare Indictment without Arraignment or due Tryal (a good reason why the Bishops were not there) when he immediately after produceth the Case of the Duke of *Suffolk* wherein the Bishops were present, and will have it stand for nothing, because in that, it was irregularly proceeded, is monstrous partiality and iniquity. But in what I pray was the irregularity in the Case of the Duke of *Suffolk*? Why, because the Commons desired he might be committed upon a general Accusation: But he was not. And the second irregularity was, that some Prelates and some Lords should be sent
down

down to the House of Commons, which is often done. But it is not the Prelates that he is thus concerned for, but that the Lords lessened their Estate. This (to excuse him) might make him very angry with that Case and quarrellsome. And yet after all there is a fallacy in the Case of Sir *John Mortimer* which he would put upon us, for Sir *John Mortimer* was condemned by Act of Parliament; and therefore the Bishops might have been there if they had pleased, and that with his leave. For it was by the Duke of *Glocester* (who in the Kings absence was commissioned to call and hold that Parliament) by the Advice of the Lords Temporal, at the prayer of the whole Commonalty in this present Parliament, and by the Authority thereof, ordered and decreed, that he should be led to the Tower and from thence drawn to *Tyburn*.

I cannot therefore but observe how by the pre-
 tence of the Canon α σφόν φάρμακον sometimes, and
 by other prudent Arts and Recesses from tumultuations, the Bishops kept themselves often from being engaged in the Animosities of Great men against one another: A matter remarkable for the commendation of their Exemplary Wisdom and Justice, and a Recommendation of the men of that Order to be continued in the greatest trusts that the Government hath committed to them.

But now shortly and summarily to review what we have offered in the matter of Precedents, and together to consider what true value and weight

weight they are of, in the Cases of *Roger Mortimer* and *Harey*, and of *Sir John Mortimer*, 2 H. 6. every body may see a reason why the Bishops should not act, if they had Authority, and therefore without wilfulness it cannot be concluded they had none. Who sees not that these Cases are Precedents for us? for that the Bishops judged in the Reversal of the sentence against *Harey*, which if they had reason for it, they ought to have affirmed. And the Bishops might have been present rightfully at the undoing the Attainder of *Roger Mortimer*, by the Confessions of these Authors.

The Proceedings in the Parliament of 15 E. 3. is a true argument of the Bishops modesty. But it proves more than he is willing to prove, if true, viz. that the Bishops cannot joyn in making Laws to punish publick Crimes, and therefore logically concludes nothing; besides that the matter is false in fact, as it is alledged.

The Cases of *Sir William Thorpe* and *Sir Ralph Ferners* (taken at best for him) are but militant, and have as much to say for, as against the Bishops being there present. But to be true to the cause of the Bishops, We have this advantage against him, that the Bishops were always in the possession of their Right, because never fore-judged, and it was once theirs, as we shall prove by and by: And this makes a presumption that they always used it, when there is nothing to the contrary.

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The Bishops were not present in the Bishop of *Norwich's* Case: but the Bishops may be at any time absent upon a *fontica Causa*. The defendant was a Bishop, which was a very allowable one in those times. But this must be considered with the Case of *Thomas Arundel* Bishop of *Canterbury*, in whose judgment they were present virtually by their Proxy; and therefore had a Right to be there.

The Case of *John de Gometz*, and *William de Weston* is unduely, and against the faith of the Record produced against us; for upon the truth of the Record the Bishops were present, notwithstanding any thing that can be from thence deduced to the contrary.

The Case of Sir *William Rikehil* 1 H. 4. is for us, so is the Case of the Earl of *Northumberland* 5 H. 4. The Case of *John Hall* who murdered the Duke of *Glocester*, and of the two Merchants that killed *John Imperial* the *Genoua* Ambassador, 3 R. 2. are foreign to this question, and so is the Case of Sir *John Mortimer*, except Judicial Authority and Legislative Authority in Blood, are of the same consideration, as I think they are, and shall hereafter make out to be probable: and then those Cases are for our Right.

They confess that the Bishops might have been present if they pleased, and their absence at the passing of those Bills doth not conclude against their Right, themselves being Judges.

The

The Writ *de heretico comburendo*, is of another consideration, and doth not fall in with the present question. There was no Judgment given, or to be given, in the Cases of the Earl of *Huntingdon*, *Kent*, *Salisbury*, Lord *Le Despencer*, Sir *Ralph Lumley*, the Earl of *Northumberland* and Lord *Bardolph*.

All these Precedents, such as they are, happened in no long Tract of time, but very tumultuous; Not one of them pretends to be an exclusion of the Bishops upon Judgment or positive declaration of State. They pretend to be only instances of Omission, or *non user*, which may well consist with a Right. And yet contrary to the true import of these Precedents, and the true Nature of them, being only of Omission and absence of the Prelates; which as they are, can make no induction or establish any proposition, whereupon to frame an Argument or conclude a prescription: Besides that a prescription is not possible in a meer negative, and to and of nothing. And where no body can use or possess that Authority in pretence in the default of the party to use it, whose Right it was. Besides that it is not a prescriptible matter (which we shall further explain hereafter) it being in a matter of the Government, and a Right arising from its constitution: Contrary, I say, to the whole nature of the matter, He makes this Argument; *à sape facto ad jus valet argumentum*. His Argument should have been (if agreeable at all to the

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matter)

matter) this, That where a Right is sometimes not used, there can be no Right. But if this had been said in *English*, every body would have condemned his reasoning, and disallowed, if not laughed at the Argument.

So that we have left this Author neither reason or Argument. We have stript the Cause of all the Precedents that pretend to favour it, and have left it *Rara Avis* indeed, but not *nigro similima Cygno*, as the learned Author in *Octavo* hath it, with which he reproaches the Right of the Bishops as assisted only with a single Precedent: But to a Bird of no colour at all, the bird in the Fable I mean, *furtivis nudata coloribus*, to be exposed to laughter with its naked Rump.

CHAP. IV.

BUT if these Precedents had been all such as they pretend to be, and the Bishops not present in Judgment, in any of those Cases which the *Octavo* and *Folio* have produced, and if they had been all Capital Causes that came in Judgment in that House, and all determined judicially, and not by the Legislative power of Parliament, and no reason was to be assigned for the Prelates absence from the Nature of the Cause : If they had had no inducements to withdraw,

draw, from any dissatisfaction they had in the prosecution, and the pretended Right of the Church-men (in those days much insisted upon) to be exempted from the jurisdiction of secular Courts, had not been the Cause of their absence, which suppositions are not so in fact: And tho' the Bishops had never used the Authority and power in question as they have; yet if we can prove they had once a Right, those Omissions of theirs, can be no prejudice to the meer-Right. (Though then (I confess) we should labour against the gainst invincible prejudice in the Opinions of most.) 1. For that no man can lose a Right by not using of it, but where that right can be usurpt by another, and is so: And that usurpation having been for immemorable time, when no body can tell when it was otherwise, shall in a matter prescriptible be intended to be acquired by good Right; and that with great reason, in favour of possession and the quieting of them; for that Estates and Rights can last longer than the Grants and Evidences or Records themselves, that first created them. But where the nature of the Right is such as this of the Bishops in pretence is, which no body can use for them. For the Temporal Lords sit in Judgment in their own Right, which is a plenary and compleat right, and cannot be made more or less. Secondly for that no Franchise, from the Power and Authority upward of a Court Leet, which can be neither more nor less by usage, than the Law hath established,

stablished, can be prescribed to : And a *Quo Warranto* will fore-close and extinguish an immemorial usage of any irregular and illegal Franchise. A Right that can never be prejudged and fore-closed by *non user*, and such is every Right that grows from the constitution of the Government, though it should be discontinued for a long tract of time, may be at any time rightfully and legally continued.

The happiness of our Case is, that we can point to the time when the Right of the Prelates to sit in Judgment in Capital Causes in Parliament, was established ; And which is more, imposed upon them, and they put under a Compulsory, and obliged by the Tenure of their Lands to serve the Crown in that capacity. And that was in the beginning of the Reign of *William the Conquerour* : Mr. *Selden* in his Titles of honour, with great probability hath fixed it in the 4 year of his Reign, when he made the Bishopricks and Abbies subject to Knight service in chief, by creation of new Tenures upon them, and so first turned their possessions into Baronies, and thereby made them Barons of the Kingdom by Tenure. This he saith is justified by *Mat. Paris*, and *Roger of Wendover*, out of whom *Mat. Paris* took this Relation. Anno 1070. (so are their words) *Rex Willielmus pessimo usus consilio Episcopatus & Abbatias omnes quæ Baronias* (that is by Anticipation ; for the Lands made Baronies) *tenebant in purâ & perpetuâ, & eatenim*
ab

ab omni servitute seculari libertatem habuerunt, sub servitute statuit militari, &c. This he makes further probable, for that in a Manuscript Copy, which he used, in a very antient hand, these words are noted in the upper Margin over the year 1070. *hoc anno servitium baronia imponitur Ramesia.* It seems, saith he, the volumn belonged to the Abby of *Ramsay*; And some Monk of the House noted that in the Margin, touching his own Abby, which equally concerned the rest of the Abbies that were mentioned in that Relation; by their Lands being put under the Tenure by Barony, and they made Barons, they had a Right to sit with the rest of the Barons in Councillor Courts of Judgment; For saith Mr. Selden, *tenere de Rege in capite, habere possessiones sicut Baroniam*; and to be a Baron, and to have Right to sit with the rest of the Barons in Council or Courts of Judgment, according to the Laws of that time are *Synonymies*. So that there were no distinctions of Barons, as to power, and Authority, or Jurisdiction; but the Right of a Baron was the same, whether he was a Temporal or Spiritual Baron, for the Tenure of both is one and the same, and therefore the Services must be the same.

The office (that is, the result of this Tenure) is the same in the House of Lords, and indeed no office can be less than what the Law appoints it. The King cannot make a Peer, a Judge or a Bishop, and put any Restraint upon the exercise

cise of the powers, and the *jura ordinaria*, that belongs by the appointment of the Law to a Peer, Bishop or Judge. And that it is an office by Tenure, can make no difference, for the Law declares the Power and Authority : So that the Powers of all Barons are and must be equal, and what is allowed to one Baron cannot be denied to another.

William the Conqueror made the Bishops Barons, by putting them to hold as by Barony, did not intend only the Bishops more honour, but himself also more service, and better assured. He cannot be intended (especially) to abate them their service in punitive or vindictive Justice, which a Conquerour of all other performances cannot want. I do not doubt, and if it were not unnecessary to this question, likewise to shew that before the Conquest, the Bishops or Spiritual Lords had a great share with the *Thanes* or Temporal Lords in the Government, and were then one of the three States, agreeable to all the *Gothish Saxon* (for the *Saxons* were *Goths* which we must not here insist upon) and Modern Governments that have been planted in *Europe*, which we shall speak to more hereafter : But we will resort no higher than this of their becoming Barons by Tenure, in time of the Conquerour, for the clearing of the Prelates Right now in question. And therefore we are not concerned to say any thing to the Case of *E. Godwin*, mentioned in the *Octavo*, in *Edward the Confessor's* time :

time: For Brevity sake, and because we will not pass the Limits of our own Arguments, otherwise we had much to say against the Authority of that Sory, as it is by the *Octavo* mentioned.

But to this day, neither in Record or History, have we heard of any the least pretence of any special abatement made of any service due by the Tenures by Barony to any Bishops or other Spiritual Baron by the Conquerour, at the time of the creating those Tenures, neither did the Bishops when they would fain have been excused from judging in Blood ever pretend to it, or make any such excuse, that their Tenures did not oblige them thereto.

They have ever been esteemed to have power of Judgment in Capital Causes in Parliament: and in a long tract of time, it hath been several ways used and acknowledged. Their Right is so far from being fore-judged, that it never till of late was brought in question. They have pretended sometimes that they ought not to use that Right in observation of the Canon Law, and have made their protestation according; whether of necessity or choice shall be considered. They were upon the score of the Canon Law indulged in the Statute of *Clarendon* from being present and assisting in giving the Judgment of Death and mutilation of Limb, yet their Right was not by that Statute destroyed or hurt, it put them only at liberty to use it, or not: but put no obligation or legal restraint upon them not to use

it. That Law was in favour of their Liberty, not a Restraint upon their Right.

The words of that Law that concern this question, we shall here set down. *Archiepiscopi, Episcopi & universæ personæ Regni qui de Rege tenent in capite, habeant possessiones suas de Rege sicut Baroniam, & inde respondeant Justiciariis & ministris Regis, & sequantur & faciant omnes consuetudines regias, & sicut ceteri Barones debent interesse judiciis Curie quousque perveniatur ad diminutionem membrorum vel ad mortem.* Whether these words are words of Liberty or Restraint, of prohibition or indulgence and favour, as also how far this favour, Liberty or Indulgence did extend, will appear clearly by the occasion of the Law, and the History of those times, for whose sake it was made, and upon what inducements, and how far they did use their Liberty afterwards.

It is notorious that the design and endeavour of some Bishops of that age, and before from the days of Gregory the seventh, was to establish an Ecclesiastical Monarchy in the Pope, to make themselves the Grandees of another Kingdom, they endeavoured to exempt themselves from all Civil subjection, as also from being any part of the Civil Government, over which their Church Empire was to rule and domineer. They looked upon their Baronies to be marks of Slavery, and inconsistent with their designed Church-empire, by which they were kept in subjection to the Government, and made a part of it, which was

was designed by the Conquerour, but most sharply complained of, as may be seen in *Mat. Paris.* *Rex Willielmus pessimo usus consilio Episcopatus sub servitute statuit militari, & rotulas hujus Ecclesiastica servitutis ponens in Thesauris, multos viros Ecclesiasticos huic constitutioni pessime reluctantes à Regno fugavit.* If the Bishops then had been ambitious and desirous, that they might be as the rest of the Barons were, Judges in the Kings Court, then it is true that the word *quousque* must be a word of Exclusion, and that their pretence of judging was fore-closed to all matters under the *quousque*. For if I ask a thing which is not my right, that which is not granted is denyed, and by such denyall (in case of a Law declared,) the more unlawful. But this cannot possibly be, for they were already Barons, and Judges as other Barons. This they reckon'd a servitude, and was matter of grievance and complaint: But the Assise of *Clarendon* did proceed from the King, for the asserting his Sovereign Power, to resist the design of the Papal Monarchy and to oblige the Bishops to continue part of the Government, and to tye them to the duty of their Tenures. *Gervasius* tells us *Col. 1386.* that the Bishops did not know what the *Consuetudines Ecclesiasticae* in the Assise of *Clarendon* were, but they imagined them to be evil, because the King did so much insist upon them. *Nesciebant* (saith he speaking of the Bishops) *hujusque quae essent illae consuetudines, sed pravas esse suspicabantur, eo quod*

quod tantâ instantiâ peterentur. But the King commanded as followeth, *sapientiâ provectiores, ite, disquirite Avi mei consuetudines, ut in scriptum redacta deducantur in medium & publice recenscantur, quas cum seorsum veteres actus & pravitates,* so he calls the Statutes of Clarendon, *in scripta reduxissent, hac tandem scripta modo Chirographi protulerunt,* which the Arch-Bishop was required to seal as the custom then was in passing of Laws. It is likewise evident in the very Assise of Clarendon, that the Bishops were then Barons, and ought to do the office of a Baron, and were by being Barons Judges, and ought *interesse sicut ceteri Barones Judiciis Curie Domini Regis.* But how far they should by that Statute be bound hereafter, this Law was to determine: In consequence the *Quousque* is but a Clause of Liberty (at most) and the matter under it, left to choice. A privilege indeed the Bishops might hereby obtain, to judge, or not to judge in Causes of blood, which they used in all after-times, as they pleased, as they did more or less regard the Canons, as either they did or were thought to intend. No right was hereby fore-closed of judging, but established, for the words are *debet interesse.* *Quousque* is a Clause of exception, and leaves them in that matter at large, and favours not at all of a prohibition. But though the Bishops might have such a Liberty, by the Letter of the Assise of Clarendon, to judge, or not to judge at all in capital Causes, which doth not at all im-
pair

pair their Right, but that notwithstanding they may use their rightful authority, when they please: Yet the Bishops did not intend themselves further priviledged by this Law, than that they should not be obliged to be present at the pronouncing of the sentence, which appears by the Canons that have been made about this matter in *England*, which we shall mention hereafter, which would have been most peremptory in their prohibitions and very severe in their denouncing Curses, in a matter of this nature, as far as they had the Laws on their side. As also by the Practice of the Bishops in those times, which appears by *Peter Blesensis*, whose words are, *Principes sacerdotum & seniores populi*, (by which he means the Bishops, who from the dignity and worthiness of their Order are called *Seniores*, a note of dignity in all Countries, in all Ages, which I observe because some are so ignorant as not to know it, and think the Laitie is meant by *seniores populi*, but if the Lay Barons had been guilty of that which he there complains of as well as the Bishops, he would instead of this complaint, declaim'd against the folly and madness of the Age, for want of justice) *Licet non dicent judicia sanguinis, eadem tamen tractant disputando, & disceptando de illis, seque ideo immunes à culpa reputant, quod mortis aut truncationis membrorum judicium decernentes, à pronuntiatione duntaxat & executione pœnalis sententia se absentent.* And it is most observable, that the Bishops did never
 excuse

excuse themselves from Session in Criminal Causes, by virtue of the Assise of *Clarendon*, but from the inhibition of the Canon; and the use of the Liberty will best declare the Nature of it.

C H A P. V.

IT's most remarkable for the understanding aright the true meaning of this Law, that the Bishops were admitted Judges in Parliament without exception of the Temporal Lords in the Case of *Thomas Becket* accused of Treason, though the King and Temporal Barons had reason to believe, that the Bishops would not do right to the Crown against that unruly and rebellious Prelate: and when the Bishops themselves would have been glad of that pretence to have withdrawn themselves. And this was about eight Months after the making the Statutes of *Clarendon*; And in a short time after the swearing the observance of them by all the *Grants* of the Kingdom. But the Law was then so well understood (however the Letter of the Statute makes matter of dispute now) that it was by no body in the least pretended, that it was to be understood to such a sence, as it is now drawn to: *viz.* to exclude the Bishops

Bishops the Spiritual Barons from judging in capital Causes in Parliament. In those times they had only such an understanding as we have here before offer'd.

We shall therefore now proceed to give you an account how in the course of time the Right of the Prelates hath been used and recognized. We will begin with the Case of *Becket* Arch-Bishop of *Canterbury*, at a Parliament held in *October* in the 11 *H. 2. Anno Domini 1165*, at the Castle of *Northampton*. To this Parliament Arch-Bishop *Becket* was cited as a Criminal, and had not his Summons as Arch-Bishop (so that that Parliament seem'd to be conven'd for doing him Justice; the offence must therefore be very great, so *Stephanides* tells us, as he is cited by *Mr. Selden 707.*) Though he was wont of custom to have the first Summons by the Kings Writ. *Nec tunc enim* (saith he) *nec diu ante ei scribere voluerat, qui eum salutare nolebat. Nec aliam per literas sibi directas solemnem ac primam, ut antiquis moris erat, habuerat Archiepiscopus ad Concilium citationem.* *Becket* was there accused of Treason, *lese majestatis corone*, saith *Fitz-Stephen* a Monk of *Canterbury* that attended *Thomas Becket* the Arch-Bishop in his troubles. Bishop *Godwin* in his Book *de Presulibus* tells us that Arch-Bishop *Becket*, *Omnia sibi cernens infesta, Navicula apud Rumenegam conscensa, in Galliam profugere contus,*

pus, ventis adversantibus in littus repertus ac de-
prehensus ad Regem, Conventus Northamptonia
agentem, adductus est. Ibi, repetundarum, peculi-
atus, perjurii, prodicionis, falsi & nescio quot ali-
orum Criminum, cum à ceteris proceribus tum &
Episcopis ipsis suffraganeis, reus factus. This
 Court is called a Parliament by Mr. Selden,
 and *magnum Concilium* by Roger of Howeden,
 and by others as Mr. Selden saith; But that it
 was a Parliament and not the *Curia Regis*,
 which we shall speak about hereafter, doth
 appear by this certain diagnostick, *viz.* that
 the Bishops were Summoned, hereto by per-
 sonal Writ of Summons to them directed im-
 mediately, at that time, which appears by
 what is before cited out of *Fitz-Stephen*, and
 what is after taken out of *Gervasius*. But to
 the *Curia Regis* they were Summoned by the
 Sheriff by a general Writ, to him for that
 purpose directed, which is a distinctive Note
 and Character of a Parliament, as will hereaf-
 ter appear.

But *Fitz-Stephen* saith, as Mr. Selden quotes
 him, Titles of honour *Fol. 705.* that *secunda*
die consulentibus Episcopis & Baronibus Angliæ
omnibus. Nay he is so exact in his observati-
 on, that he tells us who was not there of the
 Bishops, *viz. Rossensis Episcopus, & quidam*
alias nondum venerat. Howeden tells us, how
 Becket had before behaved himself towards the
 King, that notwithstanding great endeavours
 used

used on the Kings part, to reconcile Becket to himself, He would not be reconciled to the King. *Post multum tempus, faith Howeden, Ernulphus Lexoviensis Episcopus venit in Angliam, & sollicitè laboravit die ac nocte, ut pax fieret inter Regem & Archiepiscopum, sed ad plenum fieri non potuit. Deinde per consilium Lexoviensis Episcopi Rex separavit Rogerum Archiepiscopum Eboracensem, & Robertum de Welun Episcopum Herefordiensem, & Robertum Lincolnensem Episcopum, & alios quosdam Ecclesie Prælatos à Consortio & Consilio Cantuariensis Archiepiscopi, ut per illos præfatum Cantuariensem Archiepiscopum in suos Conatus facilius alliceret. Deinde venit in Angliam quidam vir Religiosus dictus Philippus de Eleemosyna missus à latere Alexandri Summi Pontificis & Cardinalium omnium ad pacem faciendam inter Regem & Archiepiscopum Cantuariensem. Per quem summus Pontifex & omnes Cardinales mandaverunt Cantuariensi Episcopo, ut ipse pacem cum domino suo Rege Anglia faceret, & Leges suas sine aliquâ exceptione custodiendas promitteret: his igitur & aliis magnorum virorum Consiliis acquiescens, Thomas Cantuariensis venit ad Regem apud Woodstock, & ibi promisit Regi, & concessit se hanc fide & sine malo ingenio leges suas servaturum. Et paulo post congregato Clero & populo Regni apud Clarendon, præcipuit Archiepiscopum quod ipse Concessionem illam fecerat Regi, & volens resiliire à pacto, dixit se*

se in illa Concessione graviter peccasse, & quod in hoc amplius non peccaret. Rex plurimum in irā adversus eum commotus, minatus est ei & suis Exitum & Mortem. Venerunt ergo ad Archiepiscopum Salisburienſis & Norwicensis Episcopi, & Robertus Leiceſtria & Reginaldus Cornubiæ Comitēs, & lachrymantes provoluti ad pedes Archiepiscopi petebant, ut ſaltem propter honorem Regis veniret ad eum & coram populo diceret ſe Leges ſuas recepiſſe. Precibus igitur tantorum virorum Archiepiſcopus veſtus venit ad Regem, & coram Clero & populo dixit ſe Leges illas quas Rex avitas vocabat ſuſcepſiſſe, & conceſſiſſe, ut Episcopi Leges illas ſuſciperent, & ut illas cuſtodire promitterent. Tunc praecepit Rex univerſis Comitibus & Baronibus Regni, ut irent foras & recordarentur Legum Henrici Regis Avii ſui, & eas in ſcripto redigerent. Quod cum factum fuiſſet, praecepit Rex Archiepiſcopis & Episcopis ut ſigilla ſua apponerent ſcripto illi; & cum ceteri proni eſſent ad faciendum, Archiepiſcopus Cantuarienſis juravit quod nunquam ſcripto illi ſigillum ſuum apponeret, nec leges illas confir-maret.

If this was not an encroaching Royall power, there was never any ſuch fault, when he was grown ſo great that the King himſelf muſt ſupplicate; that the great men of that time, though paſſionately interceding on the behalf of the King, could obtain no peace for the King. That an Ambaſſadour from the Pope

Pope and Cardinals must be sent to command him to be reconciled to the King. That he did make a shew of being the Kings friend, and did promise to be at peace with the King and keep his Laws, at the Popes Command. But of this too he soon repented, and said he would sin no more. Was not this man a Traytor at Common Law before the 25 of Ed. 3. doth not the reason of the Government declare and pronounce him so? And doth the *Octavo* Author think that a Parliament would not use the declarative power by that Statute reserved, to declare such offences as these, Treason? If the like case should happen, would not he himself be the likeliest man to be formost in the impeachment? But *Gervasius Dorobernensis* goes on and tells us, that afterwards *Becket* did voluntary penance, for the aforesaid promise made to the King, and of his submission to his Laws, and stood out in disobedience. That the King did cast about and study, *quomodo vel qua arte constantiam Archiepiscopi conterere valeret, vel elidere virtutem*, Col. 1388. But see in what respectful terms their Author in the meantime speaks of this *Becket*. We may be sure, we can have nothing from them, that is true, if it makes the Cause of this contumacious rebellious man bad. But at last the Kings patience is turned into Anger. For *Gervasius* goes on Col. 1388. and saith, *Timens autem*

Rex Anglia, ne impune manus ejus Cantuariensis Episcopus evaderet, jam edoctus multiplici Cogitatione & pravorum Eruditione quibus eum pravitatis laqueis innodaret, Præcepit Praesules & Proceres Regni, apud Northamptoniam unà cum Archiepiscopo ipso convenire, qui cum tertia die convenissent, Archiepiscopus in multis est accusatus. And no man can believe his accusation was less than Treason, that will believe what is said by all Historians of *Becket's* Rebellious behaviour against the King, and the Kings anger conceived, his threatening him with death, and the convening of this Parliament, lest he should escape unpunisht : And especially that will observe the partiality of this *Gervasius* against the King; and in favour of *Becket*. For he said, as is before observed and cited, that now the King was *edoctus multiplici cogitatione*, that now the King with much thought, and the Advice of wicked men was instructed how he might ensnare him with evil Arts, and for that purpose this Parliament was convened. And yet in particular this *Gervasius* and *Fitz-Stephen*, his faithful friend who accompanied *Becket* in his troubles, mentions only two faults, whereof he is accused, *viz.* of injustice in the Case of *John* the Marshall, and of his own Contumacy in not obeying the Kings Summons. *Fitz-Stephen*, *Hoveden* and *Gervasius* tell us, that to the two particulars *Becket* made his defence.

Gervasius

Gervasius and *Hoveden* tells us what defence he made, which the *Ostavo* hath faithfully transcribed, to do him right : (I wish he had observed the whole story, then he would have saved me this trouble of bringing it into the view of the World.) The Article wherein he is charged, for not doing Justice to *John Marshall*, is answered by laying the fault upon *Marshall* himself, for abusing the Court, bringing *veterum Cantuum Codicillum*, to swear upon, refusing to swear *sub Evangelium*, *ut moris est*. The other Article he answered, proving by two sufficient Witnesses, that it was sickness hindred him and not any contempt ; Very sufficient Answers to those two Articles, and certainly the Parliament that was called only for to punish *Becket*, might have well acquitted him and returned home, and a weighty cause this was to convene a Parliament.

But these were but two of those many things (for *multis est accusatus* saith *Gervasius*) and of the least offence (besides that they were fully answered) in any mans judgment that hath read the Story of *Becket*, of which he stood accused. By what I have here transcribed it appears, that he was certainly guilty of Treason. That the Parliament was called to punish him : The King was enraged and that justly, and therefore he was most certainly accused of Treason. *Gervasius*

goes on and tells us, that *his rationibus* (meaning that he offered in excuse of himself in the business of *Marshall* and his own contempt) *Archiepiscopus excusari non potuit, sed Curiali judicio, & Assensu Episcoporum condemnatus est, ita ut omnia ejus bona in misericordia Regis ponerentur.* And yet the prosecution went on. The Bishops are consulted with by *Becket*, how he should behave himself. Thus *Gervasius* tells us *Coll.* 1398. You may best understand the Nature of the prosecution and *Becket's* danger, by the advice of some of his Suffragan Bishops. The Bishop of *London* thus adviseth, *Si pater, inquit, recolis, unde te Dominus Rex sustulit, quid tibi contulit, considerata temporum malitia, quam Ruinam Ecclesie & nobis omnibus paraveris, si in his Regi resistere volueris, non solum Archiepiscopatus Cantuarie, sed in decuplo, si tanti fuerit, cedere deberes.* Could all this danger grow from less than Treason? Could a bare neglect to answer a Summons, where he excused his default sufficiently, or refusing to proceed in the Case of *Marshall*, for that he did presumptuously trifle with the Court, and prophanely offered to be Sworn upon a Song-book, put the whole Church and himself in danger, big enough to be redeemed with ten times the value of the Bishoprick of *Canterbury*?

The

The Bishop of *Lincoln* speaks in *Gervasius* these Words : *Patet, inquam, vitam istius hominis & sanguinem queri, & necessario alterum horum erit, aut Archiepiscopatus aut vite cendendum.*

The Bishop of *Exeter* thus : *Palam est quoniam dies mali sunt, & si possumus sub dissimulationis umbrâ, hujus tempestatis impetum pertransire illesos.* And after he saith, *satis est unum Caput in parte periclitari, quam totam Anglicanam Ecclesiam inevitabili exponere discrimini.*

The Bishop of *Worcester*, saith *Gervasius*, being asked what he thought, *ita temperavit Responsum, ut & negando palam fecerit, quid animi haberet.* The Bishop of *Ely* was sick. The Bishop of *Norwich*, the same Author saith, excused himself, *secreto asserens Eliensem feliciter adeò defensum, & quod ipse vellet simili plagâ percelli,* for he had heard, saith our Author, *quid Rex conceperat contra Cantuariensem.*

Becket not resolved what to do, desired of the Earls of *Leicester* and *Cornwall*, that he might have time untill the morrow. And the morrow being *Sunday*, time was given until the *Munday*, and then the Bishops came to *Becket* and advised him, for avoiding danger and scandal, to submit himself to the Kings Will ; which if he should do, *janz audierint in Curia Regis perjurii Crimen sibi impuni, & tanquam proditorem judicandum, eò quod terreno Domino honorem terrenum non servaret, cum avitas con-*

suetudines Regni observaturum firmasset, ad quas specialiter observare jurisjurandi nova se & illos astrixerat Religione. And now sure it will be believed that *Becket* was accused in this Parliament of Treason, for Treason was his Crime, not allowing the King, with the consent of his States, to make any Laws, but such as he should approve, aggravated with perjury, for he had sworn himself to observe them.

After *Becket* had given the Bishops an obstinate and resolute Answer to adhere to his Treasonable Practices, to disallow the Authority of the King and States in the Laws called the Assise of *Clarendon*, and to oppose the observance of them ; Observe what *Gervasius* saith, *discesserunt Episcopi ad Curiam properantes.* By and by *Becket* comes too (but the Bishops were there before him) carrying the Cross himself, which the King, as well as the Bishops, took to be a coming armed. Upon which, saith *Gervasius*, *vocatis Episcopis & proceribus gravem & grandem Rex deponit querimoniam, quod Archiepiscopus sic armatus in Curiam veniens ipsum & suos omnes, inauditâ sæculis formâ, novo notaverit proditoris.* Whereupon the Bishops by the Mouth of *Hilaris Cicestrensis* a Bishop more eloquent than the rest, thus said to *Becket*, *Quandoque, ait, fuisti Archiepiscopus, & tenebamur tibi obedire, sed quia Domino Regi fidelitatem jurasti, hoc est vitam, membra & terrenam dignitatem sibi per te salvam fore, & consuetudines*

tudines quas ipse repetit conservandas, & tu niteris eas destruere, cum precipue spectant ad terrenam sui degnitatem & honorem; idcirco, te rem perjurii dicimus, & perjuro Archiepiscopo de cetero obedire non habemus.

This I take to be a judging in Treason. But this the Bishops did for their part, as Bishops and Suffragans they did withdraw their obedience from their Metropolitan, which was (as much as in them lay) to deprive him: a conviction it was of the Guilt, not indeed *judicium sanguinis*. But this is not all; for observe what our said Author saith further, they going away, the King saith to them, *discernite quid perjurus & contumax proditor debeat sustinere. Itur & judicatur, & à quo vel qualiter judicium pronuntiandum esset, informatur.* In which matter *Stephanides*, as he is cited by *Mr. Selden* in his *Titles of Honour*, in the *Folio Edition fol. 705.* tells us, how it was consulted and debated between the Bishops the Spiritual Barons, and the Temporal Barons, for saith he, *de proferendo judicio distantia fuit inter Episcopos & Barones, utrisque alteri illud impo-*
nentibus, utrisque se excusantibus. Aiunt Barones,
vos Episcopi pronuntiare debetis sententiam, ad
nos non pertinet, nos Laici sumus, vos persona Ec-
clesiastica sicut ille, Consacerdotes ejus, Coepiscopi
ejus. Ad hac aliquis Episcoporum, Imo vestri po-
tius est hoc officii, non nostri, non enim est hoc
judicium Ecclesiasticum sed Seculare, non sedemus

hic Episcopi sed Barones, Nos Barones & vos Barones, pares hic sumus. Ordinis autem Nostri rationi frustra inritimini, quia si in nobis ordinationem attenditis, & in ipso similiter attendere debetis, eo autem ipso, quod Episcopi sumus, non possumus Archiepiscopum, & dominum nostrum judicare. By which dispute (by the way) it doth appear that both the Bishops and Temporal Lords did take themselves to be equally constituted Judges and Peers, by reason of their common Baronage, in this Case of *Becket*, a Cause of Treason ; the Bishops owned and avowed a Right of judging him as Barons, They did not excuse themselves upon the score of the Canon alledged, but from the indecency in respect of the relation that they stood in to the Criminal, he being their Superior and Metropolitan, they seem'd willing to decline the making of the Sentence. Whether any Judgment was pronounced, by whom, or what the Judgment was, is not certain, the Historians differing thereupon ; But when he went out of the Court he was call'd by the people as he past, Traytor and perjured Traytor, as the King before had called him.

And if this be not the clearest proof of *Becket's* being accused of Treason, and the Bishops judging in a capital Cause in Parliament, there can be nothing proved to satisfaction : Besides that all that writ of his story are unwilling Witnesses, they magnify, excuse and
justify

justify the man all along, extolling his virtues. They call him Saint, *Pater Patriæ* (so *Gervasius* does *Coll.* 1393.) and Martyr.

Let the Reader consider what is here faithfully recited, and then let him tell what Opinion he hath of the Candor of the *Octavo* Gentleman, who could find no fault in *Thomas Becket*, for he saith *Folio* 62. That *Gervasius Dorobernensis* saith, that *Becket* was charged with two things, Injustice to *John Marshall*, and his own contempt in not appearing to the Kings Summons : This Author had nothing of his own knowledge to charge upon him, and saith, that *Stephanides* is not to be regarded because he was *Becket's* friend, and an obscure *Author*, it may be not yet come into his Study.

The Author had reason to see no faults in *Becket*, or to forget them all for the good service the insolencies of that man hath done towards the Scandal of the Order. But we have not mispent our own time, neither will the Reader regret our length in this matter, for this single Case consider'd, gives a Resolution to the Question; and puts the Right of the Bishops to sit in capital Causes out of all doubt. This Case will let in light for the true understanding of the Affire of *Clarendon*.

For it must be noted that the Great Parliament of *Clarendon* was held by *Henry* the 2. about the latter end of *January*, in the tenth year of his Reign; the Bishops and Lords were
all

all Sworn to observe the Statutes there made (called the Assise of *Clarendon*) called the *Antica consuetudines Regni*, of which the Law aforementioned was one.

This Law therefore must be interpreted in such a sense, for that the words will bear it, and can be intended in no other than that which may consist with the proceedings in the Case of Arch-Bishop *Becket*, and with the Oaths of all the Bishops and Peers, and the great men, taken but a short time before, to observe the Statutes of *Clarendon* : Now if the whole Order of capital Causes had been intended to be excepted by that Statute above recited (upon which our Adversaries do so much ground themselves) from the Cognisance of the Lords Spiritual, and they could not be present when any such Case was agitated or moved, all the Grandees were Notoriously, Willfully, and Knowingly, and in the face of the whole World perjured to the Eternal infamy of our Nation.

Could the whole Nation be ignorant of its own Laws and Constitutions, made and sworn to but a few months before ? and neither the King, Lords Spiritual or Temporal, or Commons understand them ? 120 men at least, (for about that number were the Bishops and regular Barons in *H.* the 2^{ds}. time and not less) now come into the highest Judicature in the greatest Cause that ever was agitated (It was

in the Case of *Becket* disputed whether we should have a Civil or Ecclesiastical Sovereignty) and there sit Judges, and no body except against them in *October*, if excluded by the Statute made in *February* before ; though the King and the Nobles had reason to suspect them on *Becket's* side, and they unwilling themselves to Judge, and they under an Oath not to sit, and the Temporal Lords under an Oath not to admit them or allow them to be there? And yet not a word of this matter in all the Historians of that time, *Thomas* of *Canterbury* his friends to a man, who were forward enough to reproach the Judges sure, when they condemned the Sentence, and applauded the Criminal, and made a *Pater patria*, a Martyr and Saint of this Notorious Church Rebel. He therefore that can believe that the Bishops were not rightful and unexceptionable Judges in capital Causes in Parliament, in the time of *H. 2.* may believe that a whole Nation may become of insane Memory at once, go to bed a Monarchy and wake into a Commonwealth, without any notice or observation of a Change. And now that the Assise of *Clarendon* is of our side, I hope will be admitted, and that the Bishops not only may, but ought to be present in capital Causes in Parliament, for the words of the Statutes are ; That the *Archiepiscopi, Episcopi & universi personæ qui de Rege tenent in Capite, habeant possessiones suas de Rege sicut Baroniam,*
&

& sicut cateri Barones debent interesse *Judiciis Curie Domini Regis cum Baronibus*. So that now they were declared to be Judges as the other Barons, in that they ought to be present in all Causes : Only they were favoured so much in decent regard to their Order, that they were not required to be present at the Sentence of Death and mutilation of Member, for as much as they are the Ministers of Gods pardon, and the Publishers of the Doctrine of Faith and Repentance ; they ought to comport with their office, and express their Commiseration to the greatest Sinner, and to have some reluctance against the Sentence of Condemnation, and to that purpose is that Indulgence given them in the *quousque pervenitur ad mutilationem membrorum vel mortem*. But the Assise of *Clarendon* having ; I will not say left them, but required them to be Judges (this exception of *Quousque* &c. being only an Indulgence as aforesaid upon the Reasons aforesaid) they remain entire Judges in Capital Causes, and may depart from that Indulgence, and ought so to do when Justice is necessary, and the offences more than ordinarily Publick, and will be pardoned and escape with impunity to the hazard of the Government, except they interpose. For if the Assise of *Clarendon* had not left them entire Judges of Right, only at liberty as to the pronouncing of Sentence ; they had not remain'd Judges ; for the office

office of a Judge cannot be divided ; he that hath not an Authority to judge the Cause, can be reckoned and accounted no other than a ministerial assistant to the process, in such matters as the Court shall award. Therefore Bishops ; in that they have intermeddled as Judges in such Causes, they have continued and avowed their Right of judging, and in that they have withdrawn at the Sentence they have used that Liberty. But to leave nothing for an after objection, Evasion, or Cavillation, it shall be in our Adversary's choice, Whether this *Curia Regis* mentioned in the *Affise of Clarendon*, as also the Court that tryed *Thomas Becket*, was the *Curia Regis* wherein the ordinary Justice of the Nation was at that time administred, or the Parliament.

If it was the *Curia Regis*, and not the Parliament, was intended in the *Affise of Clarendon*, in which the Priviledge and Indulgence under the *Quousque* was allowed to Bishops ; Then the *Affise of Clarendon* is unduly urged against the Bishops judging in Cases of blood in Parliament, for that all Laws of Priviledge and exemption are *stricti Juris*, and not to be extended beyond the Letter of the Law, the single instance, or the enumerated Cases ; and consequently by the *Affise of Clarendon* the Bishops have no leave to withdraw in Cases of blood in Parliament.

If

If the Court wherein *Thomas Becket* was tryed was the *Curia Regis*, then the Bishops judging in that Court in that Cause doth most clearly declare (that being a Case in point) that the *quousque* in the Assise of *Clarendon* was an Indulgence and Priviledge, which they might use or wave as they then did.

But this cannot be denied, that the Bishops are and were Barons ever since the Conqueror, (of which, and of the *Curia Regis* we shall hereafter give an account) and whatever was the business and office of Baron, was consequently the office and business of a Bishop of Common Right, and still is, except any Legal restraint was put upon them by any Law, which was not done by the Assise of *Clarendon*, as we have proved by the reason of the making of that Law, the Interpretation of that Law at that time. Nor was that Law or any other Law hitherto pretended (but only the Canons of the Church) against the Right and Duty of Bishops in Capital Causes in Parliament, or if they will have it, in the *Curia Regis*.

C H A P. VI.

AND now we proceed further to shew how this Right and Authority of the Prelates hath been used and acknowledged in after-times.

Roger.

Roger de Hovedon hath remembred in the Life of Richard the First, who succeeded Henry the 2. That before the arrival of Richard the First in England who had been in Captivity in the Empire, that one Adam de St. Edmond, Agent to John Earl of Morton, returned into England, being sent to fortifie the Castle of Earl John, against the King his Brother, and was apprehended by the Lord Mayor of London, with several papers of instructions and Commissions of Earl Johns for that purpose: Hoveden tells us, That the Mayor cepit omnia brevia sua, in quibus mandata Comitis Johannis continebantur, & tradidit ea Cantuariensi Episcopo, qui in crastino convocatis coram eo Episcopis, Comitibus & Baronibus Regni, ostendit eis literas Comitis Johannis & earum tenorem, & statim per commune Concilium Regni definitum est, quod Comes Johannes disseiseretur de omnibus Tenementis suis in Anglia, & Castella sua obsiderentur.

This is a Cause of Treason, for that Richard the First immediately upon the demise of the Crown was King. It can be no objection that this was not a formal Parliament, for whether it was or no, it seems the Bishops power in that Cause was allowed. That it was *Commune Concilium Regni*, and had the Nature of a Parliament. And that the Bishops therein had a parity of Authority with the Temporal Lords. But soon after his return King Richard held a Parliament at Nottingham Hoveden mentions the Bishops that were present
by

by Name. In which Parliament our Historian tells us, That the King *Petiit sibi Judicium fieri de Comite Johanne fratre suo, qui contra fidelitatem quam ei juraverat Castella sua occupaverat, & terras suas transmarinas destruxerat, & fœdus contra eum cum inimico suo Rege Franciæ contra eum inierat.*

And the like Justice he required against the Bishop of Coventry, for that he had adher'd *Regi Franciæ & Comiti Johanni inimicis suis*; and it was thereupon adjudged, *Judicatum* (saith *Hoveden*) *quod Comes Johannes & Episcopus Coventrensis peremptoriè citarentur, & si intra quadraginta dies non venerint nec Furi steterint, Judicaverunt Comitem demeruisse regnum, & Episcopum Coventrensem subjacere judicio Episcoporum in eo quod Episcopus erat, & Judicio Laicorum in eo quod ipse Vicecomes Regis extiterat.*

You see here the Bishops zeal and Loyalty, that they adjoyn'd the censure of the Church which they had power of as Bishops, to a Civil punishment, which they with the Temporal Barons had Authority to pronounce against One of their own Order, who was guilty of a design to engage a Nation in a War by opposing the lawful Successour to the Crown; and this being so great a Cause, We hear nothing here of any scruple the Canon gave them, nor mention of any Priviledge of an Ecclesiastick to be exempt from the Judgment of the secular Court.

In the same Parliament *Giraldus de Canavilla* was accus'd of harbouring of Pirats, and, *Præte-*

rea, saith Hoveden, appellaverunt eum de Lesurâ Regiæ Majestatis, in eo quod ipse ad vocationem Justitiariorum Regis venire noluit, nec juri stare de prædictâ receptatione raptorum, neque eos ad Justitiam Regis producere, sed respondet se esse hominem Comitibus Johannis, & velle in Curia suâ juri stare. Hoveden tells us all, that were present at this great Council; Hubert Arch-Bishop of Canterbury, Galfridus Arch-Bishop of York, Hugh Bishop of Durham, Hugh Bishop of Lincoln, William Bishop of Ely, William Bishop of Hereford, Henry Bishop of Worcester, Henry Bishop of Exeter, and John Bishop of Carlisle, Earl David Brother of the King of Scots, Hamelinus Earl de Warrenna, Ranulfus Earl of Chester, William Earl of Feriers, William Earl of Salisbury, and Roger Bigot. Let any one judge, if it was likely that the Bishops did withdraw, in the Case of Earl John, or the said Bishop, when besides them there were but six Barons present at that Parliament. What manner of great Council would this Parliament have been, that had consisted but of six Barons? of what Authority would such a Parliament have been, in the absence of the King, and a troubled Estate of the Kingdom?

CHAP. VII.

IN the time of Edward the Second, in the two Judgments against the *Spencers*, the Right of the Bishops to judge in capital Causes in Parliament

Parliament was carried so high in opinion, that their presence was thought necessary to give Authority and validity to the Judgment of the House of Lords in such Cases ; and their absence was assigned for Error, for Reversal of those Judgments (for an Error that appears in the irregularity of the Proceedings, is an allowable Cause for vacating the Judgment by the same Court that gave it.) And so far did that Opinion prevail, that the presence of the Lords Spiritual was necessary to give Authority to a Judgment of that House, that for this Cause, because the Prelates were absent, that Judgment was reversed. Which opinion did arise upon this mistake, that because the Lords Spiritual was one of the two States that made the House of Lords, nothing could be done without their concurrence. But though they are a distinct State from the Temporal Lords, they make but one House, and they are both there under one Notion and Reason, *viz.* as they are both Lords Spiritual and Temporal, the Baronage of *England*.

But let any man tell me that can, whether if the Lords Spiritual had not been understood Judges in Parliament in Capital Causes, it could have been a question whether their absence could avoid the Judgment in the Case of the *Spencers*, much less that such an opinion should prevail, that the Judgment should be (as it was for that reason) reversed. And tho' the Reversal of that Judgment was set aside, and the Judgment affirmed in 1 E. 3. Yet the publick Recognition of the Bishops Right

Right in the Reversal remains an undeniable Testimony to their Right of sitting : Tho' the Reversal of that Judgment was not warrantable, for the reason of the Bishops absence, as it could not have been reversed by reason of the absence of as many Temporal Barons if there remained enough besides to make a House to give the Judgment. And yet we find the Reversal of the Reversal reversed in 21 R. 2. and the Family of the *Spencers* restored in the person of the Earl of *Glocester*. So prevalent was the opinion that the Bishops Concurrence was necessary in all capital Judgments in Parliament at that time. For this see *Sir Robert Cottons Abridgment, fol. 373.*

Yet it is observable that the consequence from the Bishops being a third State, and an Essential constituent part of that House ; to a necessity of their presence in all judicial matters, even of Capital Offences and Treason, did so stick with that Age: for they then in that Age did no more know what three States served for, or that they both made but one House, than some in our time can tell how to find them.

For that very Reason in 21 R. 2. the first Petition that the Commons made in that Parliament to the King was, for that diverse Judgments were heretofore undone, for that the Clergy were not present. The Commons prayed the King that the Clergy would appoint some to be their Common Proctor with sufficient Authority thereunto. The Prelates therefore being severally examined, appointed

Sir Thomas de la Piercy to assent. The words of which Petition, and the procuratory Letters, for greater Authority, and more satisfaction I have thought fit to transcribe. *Nos Thomas Cantuar. & Robertus Eborac. Archiepiscopi ac Pralati, Clerus utriusque Provincia Cantuar. & Ebor. jure Ecclesiarum nostrarum, & Temporalium earundem habentes jus interessendi in singulis Parliamentis Domini nostri Regis & Regni Anglia pro tempore celebrandis, necnon tractandi & expediendi in eisdem quantum ad singula in instanti Parlamento pro statu & honore Domini nostri Regis, nec non Regalie ac quiete pace, & tranquillitate Regni judicialiter justificandi, venerabili viro D. Thoma Peircy Nostram plenariam commitimus potestatem, ita ut singula per ipsum facta in premissis perpetuis temporibus rata habeantur.*

The Commons of England knew what they said, and could not be mistaken in fact, we know of no Judgments reversed but those of the *Spencers* ; But we have no Records or very few of the times before *Edward the Third*, transmitted to us, through the injury of the times, but they then had certainly whereupon they grounded their petition, upon which the said procuratory Letters were made, which petition here follows in terminis. *Mecredy prochein, ensuant les Communes monstrerent au Roy, coment avant ces Jeures plusieurs jugemens & Ordinances faitez en temps des progenitors nostre Senior le Roy en le Parliement eiant estre repelles & adnulles pur ceo que l'estat de Clergie ne fust prest en Parliament a la faisaunce*

saunce des dits jugemens & Ordenances, & pur ceo prierent au Roy que pur surete de sa personne & salvation de son Royalme les Evesques & le Clergie ferroient un Procurator aver poiar sufficient pur consentir en leur nosme as toutes choses & ordinaunces a justisseis en cest Parliament, & que sur ceo chescun Signior espiritual dirroit pleinenent son advys. Sur qui les dits Seigniors Espiritual severalment examines se consentirent de Comettre leur plein poiar grantant en les parts & nosmerent on especial Tho. Peircy Chivaler, & sur ceo baillerent au Roy une Schedule contenant leur dit poiar, le quelle nostre Seignior le Roy receust & commanda la dite Mecredy estre enter de record en Rol de Parliament; de que cela Schedule le form sensuit.

But it is remarkable that this Petition was made in 21 R.2. for that in the 11 R.2. the Bishops had made their Protestation, that by reason of a Canon they could not be present: The words of the protestation we shall here transcribe. *Per encheson & certains mattires feurent mouvez en cest present Parliament & toucherent overtement Cryme; L'archevesque de Canterbiry & les autres Prelates de sa province fierent une protestation en la fourme & paroles qui suent. In Dei nomine Amen. Cum de Jure & consuetudine Regni Anglia ad Archiepiscopum Cantuariensem qui pro tempore fuerit, nec non ceteros suos Suffraganeos, Confratres, & Coepiscopos, Abbates & Priores aliosque Pralatos quoscunque per Baroniam de Domino Rege tenentes pertinet in Parliamentis Regiis quibuscunque ut Pares Regni pradietti personaliter interesse, ibidemque de Regni negotiis*

tiis & aliis ibi tractari consuevis, cum ceteris
 Domini Regis Paribus & aliis ibidem ius interessendi
 habentibus consulere & tractare, ordinare, statuere &
 definire, ac cetera facere quae Parlamento tempore
 ibidem invenerint faciend. in quibus omnibus &
 singulis nos Willielmus Cantuarien. Archiepiscopus
 totius Anglia Primas & Apostolica sedis Legatus pro
 nobis nostrisque Suffraganeis, Coepiscopis & Confratri-
 bus, necnon Abbatibus & Prioribus ac Pralatis omnibus
 supradictis protestamur, & eorum quilibet protestatur,
 qui per se vel procuratorem hic fuit modo praesens,
 publice & expresse, quod intendimus & intendi vo-
 lumus, & vult eorum quilibet in hoc presenti Par-
 liamento & aliis ut Pares Regni praedicti more solito
 interesse, consulere, tractare, ordinare, statuere &
 definire, ac cetera exercere cum ceteris ius interes-
 sendi habentibus in iisdem, statu & ordine nobis & eo-
 rum cuilibet in omnibus semper salvis. Verum quia
 in praesenti Parlamento agitur de nonnullis materiis
 in quibus non licet nobis aut alicui eorum juxta Sa-
 crorum Canonum instituta quomodolibet personaliter
 interesse, ea propter pro nobis & eorum quolibet pro-
 testamur, & eorum quilibet hic praesens etiam prote-
 statur, quod non intendimus nec volumus sicuti de jure
 non possumus nec debemus, intendit nec vult aliquis
 eorundem in praesenti Parlamento dum de hujusmodi
 materiis agitur vel agetur, quomodolibet interesse, sed
 nos & nostrum quemlibet in ea parte penitus ab-
 sentare; jure Paritatis nostra & cujuslibet eorum in-
 teressendi in dicto Parlamento quoad omnia & sin-
 gula inibi exercenda nostro & eorum cujuslibet statui
 & ordini congruentia in omnibus semper salvo.
 Adhuc

Adhuc insuper protestamur & eorum quilibet protestatur, quod propter huiusmodi absentiam non intendimus nec volumus, nec eorum aliquis intendit vel vult, quod processus habiti & habendi in presenti Parlamento super materiis auditis, in quibus non possumus nec debemus ut pramittitur interesse, quantum ad nos & eorum quemlibet attinet, futuris temporibus quomodolibet impugnentur, infirmantur seu etiam revocentur. Quelle protestation leu en plein Parliament al instance & priere du dit L'archevesque & les autres Prelates susditz & inrollez jcy en rol du Parlement per Commandement du Roy & assent des Signiors Temporeles & Communes.

This the adversaries of the Bishops would have an Act of Parliament, for that at the prayer of the Bishops by the Kings command, with the assent of the Lords Temporal and Commons, it was inrolled; for that all the formalities that were used in these times, in passing a Law, was only to have the matter shortly entred in the Roll, or Journal Book, that such a thing was agreed upon by the King and two Houses, which was drawn into the form of a Law afterwards by the Justices and Kings Council when the Parliament was risen; but this was never done in this Protestation, and therefore we might say that it is not to be taken for a Law.

But we will admit it to be a Law, yet it can be a Law only for that Case, and can be extended no further: Those Bishops protest; but for whom? For themselves only, their own persons, not their successors; that by reason of the institu-

tion of the Canon they could not be present at certain matters to be treated of in the Parliament. What those Canons were they do not tell us. They had no other reason but the Canon to pretend at that time. We hear not a word from them of the Assise of *Clarendon*: And what was it that they protested? Why only that they could not be present: at what? only at the matters aforesaid mentioned in the Petition and in that present Parliament. But was this without any regard of their Right? No, they saved their Right, their *Jus Paritatis*: pray mark it: what then did they in effect depart from? nothing. They provided only that they might do nothing indecent or rather against their good liking, and at the same time consulted likewise the safety of their Estate and Order, and preservation of all their Rights.

But had they no care of the Authority of the Parliament in their absence? yes, for they very well knew that it was a probable opinion that nothing acted in their absence and during a recess of their whole Order could be rate and valid; and therefore they provide *propter hujusmodi absentiam non intendimus nec volumus, nec eorum aliquis intendit vel vult, quod processus habiti & habendi in presenti Parlamento super materiis auditis, quantum ad nos & eorum quemlibet attinet, futuris temporibus quomodo-libet impugnentur, infirmentur seu etiam revocentur.*

Let the Impartial Reader Judge whether this be not a famous recognition of the Bishops Right of sitting, what a solemn leave they had to be absent,

sent, what provisions made that the proceedings in that Parliament should not be avoided and made null by their absence; which implies a great probability, that that time allowed to the opinion of their being necessary in all proceedings in Parliament. Was there ever such a protestation entred on the behalf of the Absentees of Temporal Barons? This leave given them to be absent is an allowance of Right to sit. The proceedings they liked not and the Canon was pretended. Admitting this protestation to be an Act of Parliament, It is an Act of Parliament to give the Bishops leave to be absent *pro hac vice*, and to make Laws good that should pass in their absence. I appeal to the world whether there can be a more Solemn and Authentick Recognition of their Right than this protestation imports.

C H A P. VIII.

IT does appear by the whole tenor of this their protestation, that the Canons of the Church which they pretend had not passed into Laws; if they had, what need of such a warm protestation, only for the sake of *decency* and the *honesty of their order*, to be rid of a troublesome business? what means the saving of their right, if by Law it had been discharged? what means their further protestation that the validity of the proceedings in those Causes in which they withdrew, should
not

not be impeach't by their absence, if their Right did not remain entire notwithstanding the Canon? besides that they do not alledge the Law but the Canons of the Church for their excuse.

They well knew the nature of Canons, the force and obligation of them, and also that they were not under any obligation to the *Canon Law*, that it was only a Law in the Popes Temporal principality, and had no Controul upon the Laws of this Kingdom.

For the clearing this question it will not be unnecessary here to speak to the nature of Canons, what they effect and how oblige.

Canons therefore are no more Laws than the authority of the Church is Empire, no not in matters that are proper for their Canons. But most certainly they can neither make nor annul a Civil Right, nor do they pretend to alter or change Governments: they exceed their proper bounds when they intermeddle in any matters of this nature. But when they do extend themselves beyond their bounds and order, and appoint in any matter of a Civil Government; they intend only to counsel and direct the man how he shall behave himself in the use of his Right, which every man may observe if he please. Their Subjects are *Populus voluntarius*, the Ecclesiastical Courts are Courts of audience in matters that belong to their cognisance, and the Church's word is, *He that will hear let him hear*.

The Canons of foreign Councils tho' General, tho' we send thither our Delegates and Proxies authorized

authorized by publick Instruments, and by consent of Parliament, as has been sometimes done, have not the consideration of Canons, except received here and allowed by the same Authority, that makes the Canons of our Church.

Canons here must have the Royal assent at least to make them Canons, but with the Kings assent they are void, if they alter or meddle with any Civil Right or Constitution. If any man is proceeded against in the Ecclesiastical Courts for being contrary in any thing to such a Canon, our Courts will grant him a prohibition; if Excommunicate thereupon, a writ to assail him to the Bishop, and seise his Temporalties if he do not conform.

Nothing can alter Civil Rights or Civil Constitutions but *Law*, and such never were any Canons or so reputed; except the Decrees of Councils confirmed by the Imperial Rescripts of the Roman Emperors, who by their Rescripts made Laws by the Authority of the *Lex regia*, by which the people devolved their Right of Legislation to the Emperors: but when such Canons were confirmed by the Emperor, they remained but Canons still, the Canons were to be exacted by the measures of the Church and by the Church-men, the matters of such Canons did not employ the *Forum*; no alteration was made in any Civil Right, but the Church had Authority to require observance of them, under the Censures of the Church.

About the 11th. Century the Pope meditating the increase of his new Ecclesiastical Empire,
(the

(the Roman Empire being now extinct) did design to give Laws to the World: and to that purpose in imitation of the Imperial Roman Law, *Gratian* was appointed to compile a body of Laws accomodated to that design, out of the General Councils, the sayings of the Fathers, and some decrees of former Popes, which made that part of the Canon Law which they call the *Decreta*, to answer to the Digest which was made up of the *Senatus consulta*, *Responsa prudentum* and the *Edicta Pratorum*; to which another Book was added of *Decretals* and *Clementines*, made up of the Popes *Decretal Epistles*, which answered to the *Codes* and *Novels* which was made up of the *Edicts*, *Epistles* and *Decrees* of the Emperors: For by the Constitution of the Senate of *Rome*, called *Lex Regia*, by which they gave the power of making Laws to *Augustus*, it was established, that *quicquid per Epistolam statuit, cognoscens decrevit, aut per edictum promulgavit, lex esto*. And now there was such a thing as a body of *Canon Law*. The Pope had Power indeed to make these *Decreta* and *Decretalia* Laws in the *Domains* of the Church and the patrimony of *St. Peter*, in which he was a Temporal Prince; but it was further endeavoured by him to make them the Laws of the Christian World, and thereby to advance his pretended Oecumencial Empire, and he did so far prevail and advance in his design, that it was thought that *Rome* had again recovered the Empire of the World, and it was said with too much truth of her upon the growth of the Papal power,

—*Quicquid*

— *Quicquid non possidet armis
Religione tenet.* —

But tho' the Pontifical as well as the *Justinian Law* was publicly professed in *England* before the end of the 12th. Century, for *Mat. Paris* tells us of a Monk of *Evesham*, Anno Dom. 1196. that *suo tempore eorum quos Decretistas & Legistas appellant peritissimus habebatur, earum etiam facultatum auditores quamplurimos instituerat*, and from th at time the study of the *Cæsarean* and *Pontifical Law* did flourish amongst us, until the beginning of E. 3. But in all that time saith *Mr. Selden*, in his *Fleta*, *gens ipsa Anglicana ac qui in judiciis præerant, morum patriorum (viz.) Juris Communis Anglia per intervallum illud tenacissimi fuerunt.* A remarkable instance we have of this Nations steady aversion from admitting here either the Civil or Canon Law in the Parliament of *Merton*, which rejected a Bill for Legitimation of Children born before marriage in Concubinate, in these Terms: *Nolumus leges Anglia mutari*, meaning that they would not make Laws conformable to the Civil or Canon Law.

The great Policy that the Popes used to effect their Ambitious design of making themselves Monarchs of the Christian World were: The assuming to themselves the entire rule and Government of Religion, and endeavouring to make every where the Bishops and the whole Clergy, together with the Regulars, dependant upon them by pretending them to be exempt from all Civil Authority

Authority and Jurisdiction: and by interdicting to them the exercise of any Civil Authority, and shutting them out from all intromissions into the Civil Government, and from any interest or dependance thereupon: so far as he prevailed in these designs, he acquired an *Imperium in Imperio*; and if besides these he could have fixt a Spiritual handle to the Temporal Sword, and have got the Government of secular affairs *in ordine ad spiritualia*, his design had been compleated, and he had arrived to a more absolute and extensive Empire than that of the *Roman Caesars*.

To these purposes the Canon Law provided that the Ecclesiasticks were neither to exercise, nor be subject to any Civil Authority: But this policy of the Pope had no success in England, the endeavours of the *Papalins* herein met with constant opposition: and at last they were made desperate by the Assise of *Clarendon*, where it was declared and enacted accordingly agreeable to the *Avita Consuetudines Regni*, that the Bishops should be retained and continue to be a part of the Government, and exercise Jurisdiction in all Causes in the Kings Court as other Barons, as is before observed, and that the Clergy should stand submitted to the Jurisdiction of the Kings Courts. For this purpose it was also in that Parliament enacted as followeth: *Si controversia emerferit inter Laicos vel Laicos & Clericos, in Curia Domini Regis tractetur & determinetur*, and also *quod clerici reſtati & accusati de quacunque re ſummoniti à Juſticia Regis veniant in Curiam Domini Regis reſponſuri ibidem, &c.*

And

And so far were the Bishops and Clergy from observing that part of the Canon Law that was to detruce them from all secular Authority and Jurisdiction, that they were from time to time Chancellors, Treasurers, Keepers of the Privy Seal and Judges, and while that Ancient Office continued of *Capitalis Justiciarius Anglia*, to whom was committed the Justice of the Kingdom, (who were called *Custodes Regni, Vice-Domini Anglie*, and sometimes the abstract *Justitia*, He did preside in the *Curia Regis*, which Office was afterwards divided, for there were *Justitii Anglie Boreales, & Justitii Anglie Australes*,) this Office was often executed by Bishops as you may see in Sir Hen. Spelmans Glossary, in the word *Justitarius*. Bishops and Church-men administred the greatest Offices of State and Justice: this was matter of Envy to the Temporal Lords, and they complain'd in Parliament 45 E. 3. (as is before observed,) That the Government of the Kingdom had been a long time in the hand of the Clergy. Mr. Selden in his *Fleta* tells us, that in the times before and after the Assise of Clarendon, *Mos fuit Judices Regius ex genere hieratico, veluti Episcopis, Abbatibus, Decanis, id genus aliis, constituendi*. And it is provided by 28 E. 1. Cap. 3. That if a Clergyman was a Judge of Assise, another should be joyned in Commission with him to deliver the Goals; which was to the end that the Ecclesiastical Judge might use that liberty which was indulged to him by the Assise of Clarendon of not pronouncing the Sentence; for it must be observed

ved that by that Statute a Clergy-man might be a Judge in a Goal-delivery ; for that a Laick was by the provision of that Statute to be join'd to him in Commission, and Pleas of the Crown are to be found, purporting them to be held before two Judges, whereof one a Clerk, after this Law, which could not possibly have been if the Clerk had not been in Commission.

Besides for after Ages it is well known that all the great Officers and Ministers of State and Justice have been always intrusted with the conservancy of the peace, are in Commissions of the peace, and Commissioners of Oyer and Terminer, for judging capital Causes ; so that the constant practice in all times, as well as the expresse declaration of the Assise of *Clarendon* doth assure us that the Canon Law that prohibits Clergy-men being Judges in capital Causes, was never received here or became the common Law of *England*.

Besides what regard our Clergy had of the Canon Law, what opinion they had of the Right in question, and how far the Laws did intend to prohibit the exercise of it ; And that such right was used and exercised, will appear by the Canon of *Toledo*, *Concil. Toletan. 11. Cap. 6. fo. 553.* and the Canon of *Lanfrank*, *Spelmans Concil. 2 vol. fol. 11.* these were made before the Assise of *Clarendon*. That of *Toledo* is this. *His à quibus Domini Sacramenta tractanda sunt, iudicium sanguinis agitare non licet, & ideo magnopere talium excessibus prohibendum est, ne qui presumptionis motibus agitati aut quod morte plectendum est, sententia propria iudicandi presumant*

mant, aut truncationes quilibet membrorum quilibet personis, aut per se inferant aut inferendas precipiant. This being a Foreign Council, this Canon carries not with it the Authority of a Canon with us; only we may observe, whatever the Opinion of that Council was that it was not convenient (for *licet* can have no other sence here) for Clergy-men *agitare judicium Sanguinis*: Yet this Canon prohibits only the pronouncing the Sentence by themselves or others. I am sure, that by a positive Law, as this Canon must be, so far as it participates of the nature of a Law, nothing becomes unlawful, but what is forbidden, whatever the reason be of that Prohibition. That of *Lanfrank* follows thus; *Ut nullus Episcopus, vel Abbas, seu quilibet ex Clero hominem occidendum, vel membris truncandam judicet, vel judicantibus suæ autoritatis favorem accomodet.* This may be a Canon for all that I know; but I suspect, it had never the Royal Assent to make it so, it not being likely, that the Conqueror would discharge the Bishops from those Services of the Crown, which he had so lately obliged them to, by his tenure; but surely it was never intended by this Canon, that the Prelates, and great Abbots should, or that they did depart from their Royal Franchises, and not make their Officers for administering Justice according to their Authorities in their Charters of Liberties and Priviledges: For the words of the Canon, *Vel*
H *judican-*

judicantibus tue auctoritatis favorem accomodet;
if they signifie any thing more than what we allow must sound to that purpose.

But I suppose the Gentlemen that appear'd against the Bishops, had rather than affirm so against the known practice of all Ages, be content to agree, that this Canon did only intend to prohibit their pronouncing, or encouraging, or promoting the Sentence of Death, or Mutilation; and indeed this was all that truly could be pretended to, from them, in comporting themselves decently with respect (as the Opinion of those times was) to their Function: which is expressed to be the Inducement to that Canon of *Toledo*, as it was the only avowed Reason of all others, that is, that it did not become (as they thought) those that administered the Sacraments, which were the Seals of God's Pardon, to pronounce an exterminating Sentence of Life and Member, though they might have a farther Secret purpose therein, of carrying on the Design of a Church-Sovereignty, by embodying the Clergy, and dividing them from all Secular Dependencies; but this was nor always to be owned; neither is it an agreeable Employment to any person who pretends himself a Protestant, to urge these ill-designing Canons, as a pretence to divest the Bishops of those their Legal Rights which were so prejudicial to the high Growth of the Papal Power, upon any pretence whatsoever; or to go
about

about to deprave the Reformation, as if the true Christian Religion would not allow to the Bishops, Honors and Trusts as great as they now enjoy by the Constitution of the Government, who are the Chief Ministers of it: which is a Religion that makes men wise and good, the Religion of the State, and is the greatest Support of it, and reciprocally this Religion it self, is honored, assisted, and greatly advantaged, for obtaining its ends by those Honors, and the place at present appointed to them in the Government. But it is deplorable to find any man so madly set upon so bad a Design, that he should be thereby transported from Common Sence, and think to displace them, and degrade them by Popish Canons, that when they were made, did not oblige, were never observed, and can no more bind our present Church to observe them, than the Fathers of *Toledo*, or *Lanfrank*, and his *Suffragans* and Clerks, can be blam'd for not being agreeable to the Canons that have been made since the Reformation, or hereafter shall be made by our Church, in any after Age of the World. But there are two Canons yet behind, which have been mentioned in this Controversie, which we will likewise take notice of; or we shall have said nothing; though I almost despair, that any thing will be a Satisfaction to such Opposers as this Right hath met withall.

The first whereof was made by *Richard*, Arch-bishop of *Canterbury*, Anno Domini 1175. in 21 H. 2. about Eleven Years after the Affize of *Clarendon*, in these Words, as *Hoveden*, p. 310. ac *Gervase Dorob.* relates them, *His qui in sacris Ordinibus constituti sunt iudicium sanguinis agitare non licet; unde prohibemus ne aut per se membrorum truncationes faciant, aut inferendas iudicent: quod si quis tale fecerit concessi Ordinis privetur officio & loco; inhibemus etiam sub interminatione Anathematis, ne quis Sacerdos habeat Vicecomitum, aut præpositi secularis officium.*

The other was made Anno 1222, about 47 years after the first, which is to be found in *Linwood*, p. 146. among the Constitutions of *Stephen*, Arch-bishop of *Canterbury*, as follows, *Præsenti Decreto statuimus ne Clerici beneficiati aut in sacris ordinibus constituti villarum procuratores admittantur, viz. ut sint Seneschalli aut Ballivi talium administrationum; occasione quarum laicis in reddendis ratiociniis obligentur: vel jurisdictiones exerceant seculares, presertim illas quibus sanguinis iudicium in locis sacris tractetur, in Ecclesia, viz. aut in Cæmeterio. Authoritate quoque Concilii districtius inhibemus ne quis Clericus beneficiatus vel in Sacris Ordinibus constitutus literas pro pœna sanguinis infligenda scribere vel dictare presumat, vel ubi iudicium sanguinis tractatur vel exercetur intersit. Noverint enim huiusmodi se Ecclesiastica indignos protectione cum per eos in Ecclesia Dei per talia presumpta scandalum generetur.*

Upon

Upon both these Canons, we observe, first, that the Pope's Canon-Law had not obtained in *England*: For then there had been no need of these Canons; or however their Denunciations and Censures would have been the same: That the Inhibition is repeated by a Second Council, but in milder Terms, signifies to me the Continuance of the thing prohibited; and that it was so much in use after the first Canon, that the second Council thought fit rather to direct and admonish by their Canon, than to pronounce either *Anathema's*, or Privation against those that break that Canon.

Secondly, That neither of these Canons extend to Bishops; not the first, not only for that I question whether Bishops can be intended in such general words, *In Sacris Ordinibus constituti*: But because the Denunciation of the Canon cannot have effect as to them, no Ecclesiastical Authority can depose a Metropolitan; and also because the Second cannot, by any Construction extend to them; for *Clerici benefici*, does not mean them; and that which comes after, *aut in Sacris Ordinibus constituti*, cannot ascend in meaning, and intend the Bishops, especially in a Canon Law, which we must suppose penn'd with special Care and Observance, of Decency and Reverence to that Order.

Now, to consider them apart, I find the first agreeable to, and to prohibit no more than what the Bishops (if here meant) are licenced and priviledged from in the Assize of *Clarendon*: And to intend more, is unreasonable, when it was made in time so near to *Thomas of Becket*, that his Fate could not be forgotten. And farther, we must distinguish between the Preamble, which contains the Reason and Inducement of a Law, and what is for that reason prohibited: For let the Reason be as large as it will, yet the Law is no other than what is enjoined. Reason makes no Law, but the Legislators for Reasons which they may tell us if they please; though the Nature of Canons requires, that they should. The Preamble of this Canon, was an opinion taken up amongst some of the Clergy, viz, *Non licet his, qui in sacris ordinibus constituti judicium sanguinis agitare unde*: (saith the Canon) *Prohibemus ne aut per se membrorum truncationes faciant*, (a very fitting Employment for a Bishop) *aut inferendas judicent*; and after all this, we have still our old Answer, upon which we will ever insist; it is but a Canon, and can make no Alteration in the Rights of Government.

For tho' *Gervasius Dorob.* tells us, *In hoc Concilio, ad emendationem Anglicanæ Ecclesiæ assensu Domini Regis, & primorum omnium Regni hæc subscripta promulgata sunt Capitula*; yet the Canons of this Council are not Laws: For that
our

our Historian does not tell us of any Parliament then held, or that they were confirmed in Parliament, and the good liking of Great Men out of Parliament, will not confirm; nay, not justify the Canons, if they cannot justify themselves in Parliament. Besides, that these Canons were not made into Laws, we will offer two Reasons. 1st. For that amongst these Canons, there is one that disposeth of the Right of Patronage against the Law, as it hath been before and since taken; and that is this, *Nulli liceat Ecclesiam nomine dotalitii ad aliquem transferre, vel pro presentatione alicui personae pecuniam vel aliquod emolumentum pacto interveniente recipere: quod si quis fecerit & in jure convictus vel confessus fuerit ipsum tam Regia, quam nostra freti autoritate patricinio ejusdem Ecclesiae in perpetuum privari statuimus*; which was never, most certainly Law.

Secondly, If this had been a Law, the other Canon before-mentioned, made by *Stephen*, Arch-bishop of *Canterbury*, was idle; nay, presumptuous, for offering to derogate from a Canon, made a Law about 47 years before: But however, Canons confirmed by Law, remain but Canons still; and the Breach of them not punished as the Breach of Laws, nor no Innovation made thereby, upon a civil Right; of which before and after more.

As to the Second Canon, we observe how dutiful this Canon in the Stile of it behaves it

self towards the Civil Government, in that Clerks should not exercise Jurisdiction where Judgment of Blood is to be given, under the soft word *Statuimus*, that they should not *Litteras pro pœna sanguinis infligenda scribere*, that is, sign an Order for the Execution of a Condemned Man, or be present at the Sentence, is under the *distictius inhibemus*; but the doing of this, is not declared to be a Sin; he that is contravenient to the Canon, is not thereby to become irregular to be punished by his Superior, or to incurr Excommunication, or any Censure, the Clergy are not declared by this Canon to be incompetent Judges; it only declares them unworthy of the Protection of the Church; the meaning of it is, *Judge not least ye be judged*: If you judge the *Laicks*, they will judge you. This is the Scandal for which the *Privilegium Clericale* will be lost; So that upon the whole matter this Canon is but Advice and Counsel, and offers reasons to the Choice and Approbation, rather than a Command, under the Authority of the Church in a Council. But let it be what it will, if the Canon had been most peremptory in its Prohibition, and had lighten'd and thunder'd in its Denunciations, it would have been of no force to alter the Government, or discharge a Judge from doing his Duty; but this is farther to be duely observed, that this Canon could not be broken if the Law had not been otherwise

wise than these Canons direct; and therefore these Canons produced by our Adversaries, are the greatest Testimonies to the Right we defend, and a practice agreeable thereto. Doth not the Canon suppose, that a Beneficed Clerk, or one in Holy Orders, was sometimes in Commission for judging in Capital Causes? For certainly the Canon did not prohibit them to murder, or enjoyn them not to write Letters to stubborn men to kill. What can be the meaning of the Canon but this, supposing a Beneficed Clerk to be made a Judge of Life and Death, to assist in a Commission of *Oyer & Terminer*, or Goal-delivery, that he should be enjoyned not to pronounce the Sentence, or to sign the Order or Calendar for Execution. But if he were not a Judge, how possibly could he sign an Order for Execution? By the other words of the Canon, *Nec interfit ubi iudicium sanguinis tractatur*; he can be forbidden onely to be present and assisting as a Judge or Officer at the pronouncing of Sentence: for it can be no fault sure, nor ever was intended by any Canon to be made one, for any Clerk to hear a Court pronounce a Judgment of Death or Mutilation, or to see a Malefactor executed.

What therefore can be more evident, than that the Bishops did withdraw, not for want of Right of Session, but they pretended the Canon because they did not like the Causes? But further, that nothing more than what we have shew-

shewed was understood to be done in that Protestation, by those times (they must be allowed at least to know their own Opinions) doth appear; for that notwithstanding the Protestation of the Bishops aforementioned, the great Council of the Kingdom did not think the Authority of a Parliament when the Bishops were absent unquestionable. This Opinion we do not go about to maintain, but this we conclude, that there could never have been such an Opinion, if the Bishops had been denied Right of Session in Capital Causes in that time.

C H A P. IX,

THE Commons of *England* in the 21 R. 2 pray, that the Bishops might make their Proxy; which they did thrice in that Parliament, once by Procuratory Letter to Sir *Thomas Percy*, as is before recited; and afterwards *William la Scroop* Earl of *Wilts* was made their *Procurator*; and a third time the Earls of *Worcester* and *Wilts* were made their *Procurators*, in the matter between the two Dukes of *Hereford* and *Norfolk*.

That it may the better appear, that the Bishops were virtually present by their Proxy, it ought to appear that they were allowed to make
Proxies,

Proxies, and that the Lords Spiritual did so as well as the Temporal Lords. The first mention of Proxies that occurs in the memory of our Parliaments is in the Parliament of *Carlisle* under E.1. and that is of the Bishops Proxies. The words are these; *Quia omnes Prælati tunc plenariè non venerunt receptis quibusdam procuratoribus Prælator. qui venire non poterant adjournantur.* And in a Parliament held at *Westminster*, under Ed. 2. dorf. clauso Ed. 2. m. 11. the Bishops of *Durham* and *Carlisle* remaining upon the Defence of the Marches of *Scotland*, are severally commanded to stay there, and in the Writ this Clause was added to both of them, *Sed Procurator vestrum sufficienter instructum, ad dictum diem & locum, mittatis ad consentiendum his quæ tunc ibidem prædictos Prælatos & Proceres contigerit ordinari.* Though generally Proxies were admitted to both Spiritual and Temporal Lords, yet when the business of the Parliament was extraordinary, the Writs of Summons both to the Prelates and Barons had a Premonition, that a Proxy should not be allowed, unless they could not possibly be present, dorf. claus. 6 E.3. m. 36. claus. 1 R.2. m. 37. 2 R.2. m. 29. Nor was it unusual with the Prelates to make such their Procurators, who were no Members of that House. In that Parliament of *Carlisle* under E.1. the Bishop of *Exeter* sends to the Parliament *Henry de Pinkney* Parson of *Haughton* as his Proxy. The Bishop of *Bath and Wells* sends *William of Charle-*
ton

10n a Canon of his Church. In the Parliament
 17 R.2. the Bishop of *Normich* made *Michael Cer-*
geaux Dean of the Arches and others his Procu-
 rators. In the same year the Bishop of *Durham*
 his Proxies are *John of Burton* Canon of *Beudly*
 and others. In the Statute of *Præmunire* 16 R.2.
cap.5. it is said, that the advice of the Lords
 Spiritual being present, and of the Procurators
 of them that were absent was demanded. This
 making of others then Barons of Parliament Pro-
 xies, is not without President likewise in the
 case of Temporal Lords. *Lit. Procurator. Parl.*
4 H.5. Thomas de la War gave his Procuratory
 Letters to *John Frank* and *Richard Hulme* Clerks.
 So that it appears, that by the Law of Parlia-
 ment the Proxies of the Bishops in the 21th. of
 R.2. were legal Proxies; and consequently the
 Bishops there virtually. Besides that, the law-
 fulness thereof doth appear, for that it was re-
 quired of them by the Parliament, that they
 should make their Proxies, and be present by
 their Procurators, for this reason, lest otherwise
 the Proceedings in that Parliament should be
 void.

C H A P. X.

IT is true that the Parliament 21 R. 2. was wholly repealed by 1 H. 4. but that was for a good reason indeed, because that Parliament of 21 R. 2. had delegated their whole power to a few of their number, who finally without any resort back to the House made and past Laws.

But did ever any man before the *Octavo* argue at this rate, that because there is one error in a case for which the Judgment is reversed, that therefore there was nothing in the case legal and well considered. And therefore how unreasonable and false this way of arguing is, and that it is disputing against fact, we shall further shew and prove.

For a probable Opinion still continued of the necessity of the Bishops sitting, which implies a clear Recognition of a Right; for in the 2 H. 5 the Earl of *Salisbury* petitioned the House to reverse a Judgment given against the Earl his Father, Anno 2 H. 4. the Error assigned was the Absence of the Spiritual Lords. The Case was much debated, but the Judgment affirmed as we allow it ought to be, but we produce it as an irrefragable Testimony of the Bishops Right to sit: for if that had not been allowed, there could not have been the least colour in the case, nor matter of debate.

CHAP

C H H P. XI.

BUt tho' the Actual Exercise of the Bishops Right in their own Persons (though whatsoever is done by a Deputy, is done in the Right of him that makes the Deputation, as every body knows) was for some time discontinued (tho' their Right in that time was most solemnly owned and recognized) yet in 28 H. 6. we find them re-continuing the Exercise of that Right and Authority, and in their own Persons sitting in Judgment, upon *William de la Pool*, Duke of *Suffolk*, who was impeach'd of Treason by the Commons, for that he had sold the Realm to the *French King*, and had fortified *Wallingford Castle* for a place of Refuge. The Impeachment of High Treason was brought from the House of Commons, by several Lords Spiritual and Temporal, sent thither by the King's Command; the Ninth of *March*, the Duke was brought from the *Tower*, into the Presence of the King, the Lords Spiritual and Temporal: The Impeachment was read unto him. The Thirteenth of *March*, he was sent for, to come before the King, the Lords Spiritual and Temporal, to answer to his Charge, which he did. On *Tuesday*, the Seventeenth of *March*, the King sent for all the Lords Spiritual

ritual and Temporal, who were in Town : They are named, two Arch-Bishops, and thirteen Bishops, besides the Temporal Lords, who being assembled, the King sent for the Duke. There was no Judgment given by the Parliament, but he submitted to the King, and the King gave him Penance ; which was, that he should be absent for Five Years out of *England*.

The Lords Spiritual and Temporal, by Viscount *Beaumont*, declared to the King, that this that was so decreed, and done against the Person of the Duke, proceeded not by their Advice and Council, with this Protestation, that it should not be, nor turn in Prejudice, nor Derogation of them, their Heirs, ne, of their Successors in time coming ; but that they may have and enjoy their Liberty and Freedom, as largely as ever their Ancestors, or Predecessors had and enjoyed before this time. Observe here, that the Lords Spiritual were present at every Motion of this Cause. This Cause was thrice before them, no Exception taken to the Bishops being Judges. They could not sit by Permission, without Right ; if the Bishops had no Right to sit, the Proceedings had been certainly erroneous : For though one Judge's Absence (if there be a *Quorum*) will not vacate a Judgment ; yet if one sit in Judgment, that is not an Authorized Judge, the Proceeding is certainly erroneous and void. Can any man believe,

lieve, that the Government should lose it self? forget its own Establishments in the highest concerns? We may as soon believe that a man may forget his own name. One positive Act of Session signifies more than 100 Omissions; for if it had not been well understood, that the Bishops had a Right to sit in Judgment in Capital Causes in Parliament, they could never have been admitted; they would never have presumed to endeavour it. But with false Logick and absurd Reasonings, and dislike to the Order, it is become an Opinion in this Age, because sometimes the Bishops absented, that they have no Right.

But we have one thing further to add, that declares an inherent Right in the Lords Spiritual to the Authority in question; and that is an Opinion of the Judges 10 E. 4. 35. which says, that the Lords Spiritual in case of a Tryal of a Temporal Peer in Parliament shall make a Procurator; for then it seems an Opinion was received, (which was *error temporis*) That it was indecent for Bishops to sit in their own persons in Judgment in such cases. But they themselves are best Judges of what is indecent and unbecoming their Order; for no man is obliged to any man but himself, in the matters of Decency, and the measures that make things decent or indecent is very mutable, as changable and mutable as Customs, Fashions, and Opinions. Besides that, there is nothing that is very valuable, and is of great

great concernment, but can and ought to set aside and supersede the consideration of Decency.

C H A P. XII.

BUT to complete our Evidence, I will add the consideration of what remains unquestionably the Right of the Lords Spiritual, which seems to me to be in parity of Reason with the Right now in Pretense, and that is their Right to be authoritatively present and assisting at passing Bills of Attainder, which the Bishops always exercised as the *Folio* saith, though he will not think it allowable from thence to infer, that they have rightful Authority when that House doth proceed judicially to Condemnation. But I desire to be informed what difference there is between condemning a man by Act of Parliament, and by Judgment in Parliament. If the death of the man be onely considered, it is as much against the Canon to condemn the man one way or the other. It's *causa & iudicium sanguinis*, and death follows. Nay, to condemn a man by Bill of Attainder is more against the reason of the Canon, than the condemning a man judicially ; for the condemning a man judicially is *ex officio Iudicis*, but a Bill of Attainder is an extraordinary use of the Legislative Power

Power to a purpose, which was not designed in the Institution. Such an Act is not *ex officio Legislatoris*, but the using of the Absolute Power of the Sovereignty upon Reasons of State. Here one would think if the Canon had any consideration, any obligation, it should restrain the Bishops from meddling in such Legislations. *Privilegia ne irrogunto* was one of the Laws of the twelve Tables.

But (if I do rightly understand) the reason why Bishops did more frequently, and without pretence of scruple or objecting the Canon, assist in the Bills of Attainder, was for this reason, That the weightiness of the Affair, the high nature of the Proceeding, the extraordinary use of the Legislative Power, which can be warranted onely by extraordinary Reasons, required their Presence, and put that little pretence of the Canon out of countenance, it could not with any faith to the Government be then so much as mentioned for an Excuse by the Bishops.

And this I will say, that the Canon hath no more right of restraining the Bishops in Judicial Proceedings, than in the Proceedings upon Bill of Attainder. That it hath not done so is confessed in this, and therefore it did not *de jure* do so in the other.

The *Folio* Author hath found out a very extraordinary Reason why Bishops are necessary to Acts of Attainder, (but this he saith must not be

be drawn into an Argument for the Bishops Right of Judging) and that is, because Rights, Titles, and Interests, are made forfeit by Acts of Attainder, which were not forfeitable at Common Law; and for the doing of this it is necessary there should be a concurrence of the three Estates to bind all Rights. This Argument supposeth, that private Acts of Attainder did not always conform themselves in the matter of Forfeitures to the severity of the Common Law, or general Statute Law: which is a mistake; for before the Statutes of 26 H.8.c.13. & 33 H.8.c.20. private Acts of Attainder made no Forfeitures, but what the Common Law made; and since the Statutes of 26 H.8.c.13. & 33 H.8.c.20. the private Attainders by Parliament have not exceeded those appointed by that Statute, but have often times gone less. And therefore the Bishops were not present for the reason of making Forfeitures larger; and of more things than the Law at the time being made forfeitable, but of common duty, especially in all these matters of an extraordinary nature or difficulty, to assist as Judges and Councillours in that House. And to this that I now say, all the Acts of Parliament of private Attainders that I have seen, and they are not a few, are agreeable. I believe what he hath said in this matter is not grounded upon any observation, but he was willing to find out a Reason for what he had undertaken to prove, and to offer it without try-

ing of its truth. Besides, whatever can be a Law, can be a Law without them, and if they are absent.

C H A P. XIII.

BUT I must take notice that we have proved beyond what is necessary, to maintain the Lords Spiritual their pretence of Right to judge of the Earl of *Danby's* Pardon, which is the present case, and gives the occasion of this Dispute. And here I desire the Reader to remember and observe, what was heretofore done by the Bishops in case of Heresie The Bishop in his Consistory convicted a Heretick, and did never imagine he incurr'd the Canon pretended, (though the delivery over to the Secular Arm, and burning of the Convict if he did not recant, was intended assuredly to follow) because he did not award the Execution, and give the final killing Sentence.

How then can the Canon (if it was a Law as it is not, nor obligeth any man but he that will be obliged) lay any restraint upon the Bishops in judging of the Earl of *Danby's* Pardon. For if they disallow his Pardon, and reject his Plea, he is not to be therefore condemned, (though perhaps his Condemnation may follow, as burning doth the Conviction of a Heretick;) but he is not

not *ipso facto*, and merely by rejecting his Plea of Pardon, condemned. For observe, I pray, no man is condemned, or cast in any Suit, because he doth not make a good Defence, but upon the sufficiency of the matter whereupon he is charged. Besides, that it is not without Precedent, that a man hath been tried after a Pardon pleaded and disallowed. This every Lawyer knows to be so, that if a Plea is pleaded to any Declaration, upon which the Plaintiff demurs, if the Plea be ruled a bad Plea, the Defendent hath liberty to take exception to the insufficiency of the Declaration. So that Judgment is finally and truly given upon the Declaration and Charge, because there is a good cause of Action, and not because the Defendent hath made a bad Plea.

So that the Bishops may judge in their own persons of the validity of Pardons, without being contravenient to the Reason of the Canon so much talked of is evident; for that the Judgment upon the Pardon is not the final and killing Judgment: The *Folio* hath furnished us with an Authority for the same, out of an ancient Manuscript Chronicle *in libro Mail-rosso* he calls it, wherein he saith, the Prelates are said to have given their Opinion in 21 R.2. for the revocation of certain Pardons of the Duke of Gloucester, Earls of *Arundel* and *Warwick*, which were granted in 11 R.2. and in the Parliament of 21 R.2. repealed. And though

the Chronicle said, some blamed the Bishops, and thought that they had incurred thereby Irregularity. That doth not at all prejudice our Right, nor abate the force of the Testimony, that this matter of fact giveth to it.

We reserved it to this place to add, that as the intention of the Assize of *Clarendon* was, to set bounds to the Encroachment of the Papal Power, and in this matter to declare, how far the Bishops might if they pleased observe the Canon Law, or rather themselves, and what was thought then decent to their Order. So according to the Print in *Gervasius*, and therein he differs from *Matth. Paris*) it is, *Quousque judicio perveniatur ad mutilationem membrorum vel mortem*; which further clears the meaning of that Law to be, that the Bishops were thereby excused not altogether from Capital Causes, but onely when it was proceeded so far in such like Cause, that Judgment was to be pronounced, which when the Bishops had nothing to gainsay, they might depart, and leave Sentence to be pronounced by the House.

But we cannot after all this allow the Author of the *Folio*, to have so little sense, as with a good conscience to say, that he who cannot perhaps by reason of his circumstance, and some consideration of Indecency, execute a thing in his own person, therefore cannot do it by another, *no more than he can authorise one man to murder another*. Thus he saith *fol. 20*. when surely
this

this Gentleman cannot think it as fit for a Judge to be a Hang-man, as to sign a Kalendar for the Execution of the Condemned Prisoners.

But the *Ottavo* is somewhat surprizing in this matter: For he doth affirm, That it is not lawful for Bishops to vote in any Question preliminary and preparatory to the Sentence of Condemnation, when such Sentence follows, and the matter preliminary is necessary to the Process. This he proves by a *Logick* Rule, *Causa Causæ, est Causa Causati*; one of *Stibalms* his Axioms, hath turn'd round the Head of this Gentleman. I find few men can bear Axioms, Maxims, and Sentences. There are none speak so much unnatural Non-sence, as they that use them most. May not several men, I pray, do several parts of an affair; and yet he that doth the first part, is no ways the Cause of what another man doth in the second and third place? Is the acting the first part of the Play, the cause of acting the last; Or, is the laying the Foundation, the Cause that lays on the Roof? Is the Jury the Cause of any more than their Verdict? And doth not the Court give Judgment by their own Authority and Causality?

If men would speak by Nature, and according to first Notions, and were not so full of second Notions, and Universals, we should not have so many Errors, Mistakes, and Confounding Opinions in the Work.

But this we complain of as too severe in the *Octavo*; that when he had confounded us with his *Causa Cause, & Causati*, he would render us ridiculous with a Story of a Friar, out of *Chancer*,

That would of a Capon, the Liver, of a Pig, the Head;

But would, that nothing for him should be dead.

This indeed was a fine piece of Wit in the Poet; but translated hither by our Author, is an insipid piece of Malice. His Design sure in this, was, to enter the Bishops amongst *Chancer's* Friars; and then the Learned Readers of *Chancer*, would be very conceited upon them; and apply all his pleasant Satyrs against the Friars, to the Bishops.

But for the farther Evidence of the Bishops Baronage, and their *Jus paritatis*, it would not be impertinent here, to add, That the Names of *Barons, Peers, Seniors, Grants*, have been attributed to the Lords Spiritual, in all times, in Authentick Histories and Records. Forasmuch as a Nominal Argument, is not a very artificial Topick in such a Cause as this. Besides, that this will destroy the very strength of our Adversaries; which lies in this, that they will not allow Prelates to be comprehended in the Name of *Peers, Grants, and Barons*. And that where the Records doth not expressly mention Prelates, they will conclude, they were not meant or intended to be present:

But

But the Collection which was made for this purpose, shall not trouble the Reader, because in two Books since Printed, in Defence of the Bishops Right in question, this is abundantly performed. Besides, that it is a very precarious Conclusion, that our Adversaries make, and without argument: For they ground themselves herein, upon a most unreasonable *Postulatum*, viz. That Titles do not belong to persons for whom they were made; and to whose Character they agree; and that Words do not design the things which they were made and imposed to signifie.

C H A P. XIV.

NOW we shall proceed to perform a necessary piece of Justice to the Prelates, as well as a Right to the Government, to recover its true Constitution, from the Prejudice of Modern Ignorance, to declare and manifest, that our Government doth consist of three States, the Lords Spiritual, and Temporal, and Commons of *England*.

These do make the Great Council of the Kingdom, and minister to the King, Council and Auxiliaries; over which the King doth preside as the Great Superintendent, and mover of this mighty *Machin*.

The

The consequence of which is, that the Bishops cannot be detruded from that place they bear in the Constitution of the Government, for that no Government can be legally or by any lawful power changed, but must remain for ever once established. And it cannot be no less than Treason of State to attempt a change, no Authority in the world is competent to make any alteration.

The Princes of Christendom, after they took to themselves the Election of Bishops, which is a natural right of the Sovereign Power, become Christian, they soon observed the advantage that they might make by advancing them to the greatest Secular Dignities, Governments, and Trusts; and did accordingly advance them to an equality, if not to a superiority, to the highest of the Secular Nobility; gave them Duchies, Marquises, Baronies, and rich Endowments, and erected that Order into a successive Nobility. Another sort of Nobility from that of the Lay Princes, concluding that they should be better served by men of their own choice and approved worthiness, (who had also other advantages over the People, than those that the Temporal Princes and Lords had, by that Reverence they paid to their Bishops, and the Authority and Power that they had over them in the virtue of Religion) than by the Hereditary Princes and Nobility, who did not always answer to the virtue of the original Ancestors, and the first stock.

Be-

Besides that, Religious Kings and Sovereign Princes did by advancing Bishops intend to do great advantages and honour to Religion; but withall they did not divide the Bishops thus advanced, from the Secular Princes and Noblemen in Councils, for then they had lost their design. The Bishops could not have had any direct influence upon the Councils of the Nobles and Secular Princes, nor have tempered their Debates with an excellent Charity and firm Loyalty, and other Vertues which belong to their Character. It would have made trouble, distraction, and impediment in the Affairs of Princes, and emulation and strife and faction between the Ecclesiastical and Secular Orders and several mischiefs and great inconveniencies would have ensued, if they had been divided and separated in several Colleges, and had had in consequence thereof a Negative upon each other, as they then of necessity must. But by uniting both Orders into one Council and Assembly, distractions in Councils and impediments to the Affairs of Princes are avoided. And we are assured of a more wise, as well as an unanimous and more authoritative Result in all Councils and Debates; which if the *Octavo* had duly considered, he would not have depraved and disparaged this wise Constitution, by comparing it to a nest of Boxes.

They were therefore for these great Reasons, both Spiritual and Secular Lords, united in the
great

great Councils of Kingdoms, and these two Orders of Nobles Spiritual and Secular, became the two States, which together with the Representatives of the People the third State, made the Parliaments Diets and Convention of State, under which Names the great Assembly which we call a Parliament, in the several Sovereignties of Christian Europe hath respectively passed.

This hath been observed by the most learned Onuphrius: *Postquam verò juris imperii facta est eorundem Prælat. electio, quemadmodum & ceteri Principes seculares Imperii, tum Cæsares qui de Religione bene merere volebant, sine Imperii tamen præjudicio cæperunt Episc. & Abbates, ob Religionem tanquam potiora Imperii membra, præ cæteris Laicis Principibus honorare, profana ditione & ingentibus opibus honestare, Arces, Oppida, Urbes, Marchias, Ducatus, Provincias, Pedagia, Telonia, Vectigalia, Portaria, & multa alia quæ Imperii propria erant, Episcopatibus concedere, quæ vel ex suis propriis bonis quæ ad Imperium pertinebant, vel ex alienis feudis erant. Nam Laicis Principibus sine legitimo hærede mortuis, eorum Provincias, quæ beneficiario jure ad Imperium pertinebant, non aliis ampliùs Laicis Regulis, sed Episcopis concedebat; atque hac ratione omnes Episcopatus & Abbatis Italia, Galliarum, & Germaniæ, imò totius Orbis Latini, & denique ipsum Pontificem Romanum, ex pauperibus ditissimos maximos Principes fecerunt, & ex eis scilicet quibus, quæ antea Imperii juris erant, in nulla re propterea Imperialia jura minui existimantes; quippe*

quippe quod certi essent eos omnes Prælatos a se designandos fore, & non nisi jussu suo, & voluntate Sacerdotia ipsa obtenturos.

Nicholaus Cusanus, lib. 3. de Concordia Catholica cap. 27. attributes this Policy to Otho Secundus, who saith he, *Unico gaudens filio & multis regnis, cogitans difficile fore absque maximo labore, tot regna in pace aliquamdiu servari posse, insequens vestigia Avi sui Henrici Primi, & Ottonis Patris, suum cogitatum ad res ecclesiasticas appulit, considerans multa jam Religiosis locis per præsentis Reges donata, summa pace gaudere, quia verendum erat Deo dicatis vim inferre animo ponderavit Ordinationem factam Synodo Romanæ Ecclesiæ, de qua 63. Dist. In Synodo. Per quam perpetua dabatur potestas Imperatoribus, & Romanum Pontificem, & Cunctos sub Imperio Episcopos investiendi, vel saltem eorum consensum semper concurrere debere celebrata Canonica Electione, ut 63. Distinct. NOS SANCTORUM. Unde hoc ponderans credidit, perpetuis temporibus Imperio subiectis pacem dare posse, si temporalia Domina, tam Romanæ Ecclesiæ, quam aliis adjungerentur, cum certi Servitii observatione, tunc enim cultus Divinus augmentaretur, & Religionem in magnam Reverentiam exaltandam credidit quando sanctissimi magnæ potentie aliis Principibus intermischerentur: non posse tunc quosque voluntate in peccatis, uti nulla publica sperabat unquam peccata Captorum & depopulorum, agrorum, & communem pacem turbantium, incendiariorum;*

& consimilium posse nutrirī Ecclesiasticā Sacra potestate potenti & valenti resistente: etiam prædones, & pauperum oppressores, qui particulari regimini præessent, sic corrigi posse affirmabat, ut sic absque Tyrannica Oppressione populus in Libertate vivere posset. Imperio etiam tranquillissimo non dubitabat hanc Ordinationem esse utilissimam, quando per annua servitia, & præstimonias quilibet Ecclesia juxta quantitatem temporalium indictas Status Imperialis manu teneretur, ac etiam multo major Imperii Potentia, ex hoc appareret quod illis omnibus Dominiis ita Ecclesiis traditis, nullus nisi per Imperium, & absque Successione percipi posset. Who is desirous of more to this purpose, may see Sigonius, de Regno Italiæ.

Bishops were made Dukes and Counts in France, and also Peers in France; and about this time, out of the Princes, Dukes and Counts, the number of 12 were selected by the Kings of France, and erected into the Title of the 12 Peers of France: by which Dignity, they became the Chief Councillors, and Directors of State. These twelve being chosen, besides their being Peers in matters of Judgment, in the Old Parliaments, were Peers also in the management of the whole Kingdom; and while their Greatness held, were therein so Powerful, that they added a Taste of Aristocracy to that great Monarchy (not disagreeable to the Title that our Peers assumed of being *Pares Regis*, and having a Power, *Frænum imponere Regi*,

Regi, as *Braſſon* tells us ; but he and his Law both are antiquated. Of theſe, ſix were Lay, and ſix were Eccleſiaſtical ; but the Dignity of *Pair*, is ſuppoſed in theſe Biſhops, not as they are Biſhops ; but as being Dukes and Counts alſo ; that is, in the firſt three, *viz.* *Rhemes*, *Laon*, *Langres*, as Dukes, and of *Beauvois*, *Chalous*, and *Noyons*, as Counts :

Theſe twelve Peers of *France* had ſuch a Power towards the Ancient Kings of *France*, as the *Ephori* of *Sparta*, and the *Juſticiaries* of *Arragon* had towards their Kings. They were obliged to exerciſe that Power with Care, and they did exert it towards their Kings. What they did agreeable to the Power aſſigned them in the Government, was lawful and juſt ; nay, their bounden Duty. But certainly, the Exerciſe of theſe Powers was againſt no Command of God : For God makes no Government ; nor obligeth us to obey any, but what are made by Men : The Government it ſelf is its own Meaſure. It's no Objection againſt the Lawfulneſs of any Government, that it's inconvenient, if they like it notwithstanding, whoſe Government it is. But this Conſtitution was of advantage to Royal Families, in that it made a kind of Entail of the Crown upon their Families, and preſerved the Monarchy and its Deſcent : And beſides, had this farther Conveniency, that it was under them impoſſible for a Nation, or Kingdom to be undone in a
trice

trice for a Caprice of the Prince, or destroyed to make a Fortune for some Up-start.

For the Sake of Mankind, it is to be earnestly desired and prayed, that such as they who derive no Honour from their Ancestors, may leave none to their Children, that themselves may survive their Honors, and leave nothing of their Fortunes to their Children, but what they themselves could deserve, *viz.* Hate and Infamy. All Usurpation and Encroachment of Power is to be opposed where it can be lawfully; as the greatest Mischief, and the Ministers to the Designs hated and detested as the most pernicious and loathsome Vermine.

C H H P. XV.

BUt to return, agreeable to this Policy of Sovereign Princes, who had the Donation of Bishopricks, of advancing Bishops to the highest secular Dignities and Trust.

William the Conqueror did create Bishops into Barons, and exacted the Services and Counsells of Barons in the Great Council of the Kingdom, by putting their Lands under Tenure by Barony: he gave them no new Endowments; but as a Conqueror, he confirmed their Ancient Possessions, under a new reserv'd Tenure, and annex'd to their Order, a Secular Honor,

a successive Baronage. Since the Conquerour the title of Baron took the place of that of *Thane*, which was likewise a Feudal Honour in the *Saxons* time. By *William the Conquerour* Baronies were feudal, and in congruity to the State of the Lay Nobles he made the Bishops feudal Barons, for there was no other than feudal Nobility at that time.

It will not be amiss, nor time mispent, here to give a short account of the Government in the Conquerours time, of the Baronage by him introduced, and the policy thereof, and of the change made in the Baronage of *England* in a later time. Because from thence we must derive the Bishops Right now in question, which is included and virtually contained in their Right of Baronage. Hereby it will appear, that the Bishops were of the *Barones majores*, and of the *Barones majores* the first in Dignity, that they became feudal Barons in the Conquerour's time, and when the reason of our Baronage changed, and no man continued a Baron *ratione tenuræ*, it cannot with reason be said, that the Bishops are Barons onely for the sake of their Lands, which our Adversaries do insist upon, for that they think it is an abatement to the Honour of Peerage, and a prejudice to their Right in question: but because it has been said before by men of Authority in the Law, and grown up to be a vulgar error, we will now discharge the mistake, by affixing here the History and Reason of the change.

K

It

It was the policy of the first *William*, (for some are so critical they will not call him *Conquerour*) to create new Tenures upon all the great Possessions of the Realm, and impose upon the principal men to hold their Lands of him *in capite*, under such Services that were necessary in peace and war for State and Justice, and by putting all the considerable men of the Realm under Oaths of Fealty incident to those Tenures, besides the Oaths of Allegiance, he provided for the establishment of his Conquest, or his possession of the Crown without title. The principal men of the Realm, both Ecclesiastical and Lay, hereby were not only obliged to support, but to become part of the Government, and were obliged to be Ministers of Justice, and also Members of the great Council of the Kingdom or Parliament, which was now to be made up principally of his Dependents; by which he changed the constitution of the great Council in the *Saxons* times, & in the balance of that equal sort of Government, the consequent mischiefs whereof this Kingdom laboured under, untill we recovered it again by an equal representative of the Commons in Parliament, in the time of King *Henry* the Third. The power of the Baronage proved equally oppressive to the people, and came in that time to be reduced irreverent to the Crown. By this policy the Conquerour intended to establish his Conquest, to secure to himself, and his posterity, the Imperial Crown

Crown of *England*, imagining, that otherwise he should have been but a precarious King.

He had now turn'd the Kingdom upon the matter, into one great Mannor, and kept his Courts, called, the *Curia Regis*, in the nature of a Sovereign Court Baron; now become more frequented and solemn, than that Court was before the Conquest, thrice in every Year, at stated Times, and Places, viz. at *Easter*, at *Winchester*, at *Whitsuntide*, at *Westminster*, and at *Christmas*, at *Gloucester*: at these times and places, all his Tenants, which were all the considerable Free-holders of *England*, attended of course; and upon a General Summons at any other time or place appointed by the King, as his Affairs did require, they were bound likewise to attend.

In these Courts the Suitors swore Fealty, did renew and confirm their Obligations to the Crown, and the King became more assured of their Allegiance, by their Personal Attendance, and by his Royal Entertainments of them at such times.

In these Courts they recognized their own Services, and the Rights of the King, their Lord, and assessed Aids and Estuage, Prestations due to the Crown, by their Tenures upon themselves, to which in general they were obliged by their Tenures. In these Conventions the Right of the Suitors, the King's Tenants were adjudged, as Private Lords had Judg-

ment of the Right of Lands, in pretence held of them in Fee, in their several Manors, as they have to this day. But if Right was not done by the Lord, the Cause was to be removed to this *Curia Regis*, the King being Lord Paramount, of whom all Estates, mediately, or immediately were held : Which appears by the Form of the Writ of Right now in use, which we will transcribe, N. B. *precipimus tibi quod sine dilatione plenum Rectum teneas A. de B. de uno Messuagio L. in I, quæ clamat tenere de te per liberum Servitium unius denarii per annum pro omni servitio, quod W. de T. ei deforciat ; & nisi feceris Vicecomes faciatne amplius inde Clamorem audiamus pro defectu Recti.* The Common Pleas was not then a Court, and at this time the Appeal and resort to the King, was in this Court, if Justice was not done by the Lord or Sheriff. So that the greatest part of the Justice of the Nation was administred in those Assemblies.

But it must not be understood, that this vast Convention was a Court of Judicature for every Cause ; neither, that it was formally a Parliament, without some farther Act of the King, for erecting that Convention into the great Council of the Nation.

But in this *Curia Regis*, they were obliged to answer the King's Writs of Summons, Writs of Commission, and obey his Appointments in the Ordinary Administration of Justice, in which the *Capitalis Justiciarius*, or *Justitia* was to preside.

That

That this was not a Judicature, the vast numbers of those that made it, the inequality of the Persons considered under the Common Reason of being Tenants in *Capite*, and Barons, whereby they became indifferently members of the *Curia Regis*, besides the neglect that must necessarily be presumed in the greatest part of such a Body, to the business of Jurisdiction and judging of Rights, without particular Designation thereto, do sufficiently argue and evince. But as many of them as were most proper to judge, or assist in the Judgment, as the Case did require, were appointed by the King, or his *Capitalis Justiciarius*. And that it was so in Fact, appears by that Famous Cause, wherein Archbishop *Lanfranc*, recovered against *Odo*, Bishop of *Baieux*, Earl of *Kent*. *Eadmerus Hist. Nov. l. i. f. 9.* tells us, That there was *Principum Conventus*, an Assembly of Barons at *Pinneden* in *Kent*; and that the Kings Precept was, *Rex quatenus adunatis primoribus & probis viris, non solum de Comitatu Cantia, sed de aliis Comitatibus Anglia, Querele Lanfranci in medium ducerentur, examinarentur, & determinarentur; disposito itaque* (saith he) *principum Conventus apud Pinneden, Gaufridus Episcopus Constantiensis, vir ea tempestate praedives in Anglia Vice Regis* (for *Odo*, Bishop of *Baieux*, one of the Litigants, was at that time the *Justiciarius Anglia*) *justitiam de suis querelis strenuissime, jussus, fecit*; where we see *Godfrey*, at the King's Precept, took so many Barons of

that Country, or of any other, where any of the Lands lay as Assistants to him: For our Historian saith, that *Lanfranc*, (though *Godfred* pronounced the Judgment) did recover *judicio Baronum qui placita tenuerunt*. The *probi homines* were such, by whom the truth of the matter might be better understood, and did probably enquire of it, who did accord and agree the Judgment to be right. *Lanfranc* did recover *ex communi omnium astipulatione & judicio*, as our Historian also informs us. I might cite many more Records of the Method of the Administration of Justice in this *Curia Regis*; but I should be too long in this matter, not being strictly necessary to the Question in hand, though the understanding of the Nature of this Court, and the Constitution of the Government at this time, will many ways inserve to the clearing the Right thereof.

In this Court Peers were tryed, all Pleas of the Crown heard; and whatever is now the Business of the Courts of Common Pleas and Exchequer, was dispatch'd in this *Curia Regis*. Here Fines were levyed, as appears by a Record furnished to us, by Sir *Hen. Spelman*, in his *Gloss. f. 279*. the word *Fines*. There men famous for their Skill in the Law, did attend, and by this Judicature, some place was assigned them, where they were to hear such Causes as were referred and sent down to them and it is very possible, that Fines may be levyed, *i. e.* Concord

cord made of the thing in pretence, that was referred to them; and it may be true, that in a Charter of a Grant of *Connissance* of Causes, Words may be contained for excluding the Intromissions of the Justices of the one Bench, and the other: For such Charters never want words. These matters are produced by Sir *Edward Coke*, in his Preface to the Eighth Report, to prove that the Common Pleas was a Court before the *Magna Charta* of King *John*; for that these matters are in time before that Charter; but these Justices were no other than Ministers to the *Curia Regis*: They were not such Justices as now make that Court, all Common Pleas being now appropriated to their Judicature: For the Writs, before that Charter, were returnable, *coram me, vel Justitia mea*, *Glanvil. l. 1. cap. 6.* but after that Charter, they were returnable, *coram Justiciariis meis apud Westmonasterium. Bracton. l. 2. cap. 32.* But before this, all Common Pleas were adjudged in the *Curia Regis*, and that Court did send down the Cause to such as did attend that Court, to receive its References. By *Magna Charta, cap. 11.* it was provided, *Communia placita non sequantur Curiam nostram, sed teneantur in aliquo certo loco*: And now Writs were made returnable there, the Common Pleas were taken out of the Jurisdiction of the *Curia Regis*, one Judicature was appointed for all Causes between the Subjects, and one place of

Attendance for Litigants. By this Provision, Justice was administred without Noise and Tumult ; the Administration of it committed to men of Skill ; and to such who might be answerable for their Judgments, and from whom it might be appealed.

But after *Magna Charta*, made by King *John*, and confirmed by *H. 3. 9.* the Authority continued of the *Justitia*, or *capitalis Justiciarius* : to him was the resort for Writs, from whence all Judicial Authority was still derived : He did direct and bound the Justice of the Court of Common Pleas, by such *Formula's* as were allowed in the *Curia Regis*, where the Chancellor, and his Colledge of Clerks did attend for the forming of Writs, according to the nature of the Complaint, with the Allowance of that Court ; but the Authority of this Court ceasing, and the Office of this great Justiciary, about the end of *H. 3.* we find in the Statutes of *Glouc. 6 E. 1. c. 7.* Laws for a Writ of Entry to be granted to the Reversioner, where Tenant in Dower, Aliens in Fee, though her Alienation was a Forfeiture of that Estate at Common Law : But it seems there had been no such Writ yet formed ; and the Chancellor had no such Power of forming a new Writ. That Statute provides, that in that Case, there shall be a Writ of Entry thereof made in Chancery, which is called, A Writ of Entry *in casu proviso.*

And

And for that Power might not be wanting in the Chancellor to issue out new Writs where no Writs before formed were fitted to the Case; So that Writs in Cases of like reason had been granted; by *W.2. cap.24.* it was provided, *quotiescunque evenerit in Cancellaria quod in uno casu reperitur Breve, & in consimili casu cadente simili indigente remedio concordent Clerici de Cancellaria in Brevi faciend.* Whereas in the full Authority of the Court of the *Curia Regis*, no Right could have failed of a Remedy: For *Jura sunt matres Actionum.* But Derivative Authorities, are always *stricti Juris*; no Rights are now remediable, but where they are in a Parity of Reason, or Analogy with such Rights as had received relief in the time of that Great and Original Judicature.

So inconvenient are those Reformatations, that reform by pulling down: Want of Authority to do Right, is a greater Fault in Government, than the allowance of a Power that may be abused to Wrong and Oppression: But this is the true reason why we have so many Causes irremediable at Common Law, petitioning for relief at this day in our Court of Chancery; though, if the Statute of *Westm. 2.* before-mentioned, were well improved, the Defects of our Law would not be so shameful and notorious.

By what hath been said, it appears, that the Common Pleas was not an Original Court, or

a Court of ordinary Jurisdiction in the First Constitution of the Government; and such it remains and continues to this time: For that Court cannot proceed to Judgment in any Cause, without an Original Writ out of Chancery, though a late Statute makes their Judgments good, without an Original upon a Verdict. If the Causes that are properly now of the cognisance of that Court of Common Pleas, had been allotted to that Court Originally, when the distribution of Administration of Justice was made in the Constitution of the Government, that Court, by its proper Authority, and its own Process, would have done Justice to all its Suitors, without first expecting a Writ out of Chancery, to bring the Cause before them; or leaving any right without remedy to complain in Chancery of the defects of Justice in that Court.

But that Law of *Magna Charta*, cap. 11. before-mentioned, which erected the Court of Common Pleas, fix'd the Judges, and appropriated civil Causes to their Judicature, no longer now ambulatory, was the first step that was made to reduce the Court of Barons, called, *Curia Domini Regis*, in which the *Capitalis Justiciarius* did preside: Yet still this Court continued a Court of Pleas of the Crown and Appeals, and for those that had the Privilege of that Court, as Officers, Dependents, Suitors, as appears by *Bracton*, l. 3. cap. 7. *Rex habet unam propriam*

propriam Curiam sicut Aula Regiam, & Justitios Capitales, qui proprias causas Regias terminant & aliorum omnium per querelam, (i. e. Appeal) vel per privilegium seu libertatem. This Sir Edward Coke imagines is meant of the Kings Bench, but that must be a mistake, for *sicut Aula Regia* is not competent to that Court as now, the *Capitales Justitiiarii* were not the Chief Justices we now have: For the Office of the *Capitalis Justitiarius* did yet continue. But then that which follows in *Bracton*, the description of the Justices of the Court he before spake of puts the matter out of doubt; *Item* (saith he) *Justitiariorum quidam sunt capitales, generales, perpetui, & majores, à latere Regis residentes*; which terms are agreeable to none but the Barons.

But this sort of Judicature was not fit for continuance, and the Barons were to be reduced, they were dismiss of this Jurisdiction about the time that change was made, in reference to them in the Parliament; for as long as they continued in their numbers and power so great as they were; both Courts and Parliaments were troubled with tumultuous heaps of people, brought thither by the Barons to countenance their pretences, of which who will may see enough in *Eadmerus*. And this reducement was (I doubt not) about the end of the Reign of *H. 3.* when the first Writs were issued to chuse Knights of the Shire. *Philip Basset* was the last of these *Capitales Justitiiarii*; Sir Henry Spelmans *Glossary* p. 415. And then

then the Court of Kings Bench came to have such Judges as at this day, *ad obitum* H.3. 1272. *Summorum Angliæ Justitiariorum autoritas cessavit, postea Capitales Justitii ad placita coram Rege tenenda appellati sunt*, saith an ancient Anonymous Author quoted by Sir Hen. Spelman, *Glossary* 406.

That ancient Style of *Capitalis Justitiarius Angliæ* is now allowed to the Chief Justice of the Kings Bench, though his legal Style is *Capitalis Justitiarius ad placita coram Rege tenenda*. 2 E.1. *Radulphus Hengham* was made the first Chief Justice of the Kings Bench, as Sir Henry Spelmans *Glossary* 416. But the Chief Justices of the Common Pleas were first made about the time of King John's *Magna Charta*, when that Court was fixed, as is before remembered. Sir Henry Spelman out of *Florilegus* tells us, *Martin Peteshus* was Chief Justice of the Common Pleas, 1 H.3.

Neither did E.1. trust the Barons with the Government of his Revenue, as it was before the *Capitalis Justic.* and the power of the Barons was reduced; but he made *Adam de Stratton* a Clerk Chief Baron, but in what time of his Reign doth not appear.

But they continued after they were reduced from the business of the Kings Bench, and from that of the Court of Common Pleas, to have the Government of the Revenue, and making a Court of Exchequer. And they still continued the

the Exercise of their ancient ordinary Right, and judged Common Pleas in the Exchequer until the 28 E. 1. And then in the Statute called *Articuli super Cartas cap. 4.* it was enacted, That no Common Pleas shall be henceforth held in the Exchequer, contrary to the form of the Great Charter. Their exercising their power lastly in that Court, may be the reason why the Judges of that Court are called Barons. Sir Henry Spelman saith, he hath an uninterrupted Succession of the Barons of the Exchequer, from the sixth year of Edward the Second; by which it appears, that the present Constitution was established after the Kings Bench and Common Pleas were made such as they now are.

But there was one Power and Authority that was inseparable from the Baronage, and that is the Tryal of Peers, the ancient *Curia Regis* continues to this day to that purpose, as it must, no other provision being ever since made therein. This is the ancient Court of Peers, the *Curia Regis* when revived. The Power and Authority of the ancient *Capitalis Justitiarius* is as often revived, as that Court is erected for Tryal; for Offices at Common Law can be no more nor less than the Law appointed. That he is called *High Steward* is no Objection to us, for so was the *Capitalis Justitiarius* called, and *Justitiarius* and *Seneschallus* are used one for another in the Language of those times; Sir Henry Spelmans Glossary 403. And this is the true reason, I humbly

bly conceive, of that Tradition, that the *High Steward* by the Kings constituting him such, hath such mighty powers that are fit to be trusted with him, no longer than while he is busie about that piece of Justice for which he is appointed; and he is not to receive his Commission, but just at his entry upon the business of the Court, and not before. The power of this *Capitalis Justitarius* was the same with that of the *Mair of the Palace in France*, from whence the Conquerour brought this Office, which was the same or greater with the Authority of the *Præfectus Prætorio* amongst the *Romans*.

It is a thing to be wished, that Gentlemen that apply themselves to the study of Antiquities, that relate to our Laws and Government, would design to adorn and cultivate the present Laws, and to make out their reasonableness, rather than to innovate upon us, by bringing back what is obsolete, rejected, and antiquated; and that they would contribute what they can to refine it from many absurd reasons that dishonour our Faculty, which are the best our Books afford even for some of the *Regule juris*.

I shall instance onely in one or two of them: Why the Father cannot inherit the Lands of the Son, it is told us for a reason in our Books, that *Terra est quid ponderosum*, and will not ascend in the right line; whereas the true reason is this, the Lord that first granted the Fee neglected the Father, gave it to the Son and his Descendents, and

to

to the Family he should derive from himself; and when this was alienated in Fee, the descent of it was directed agreeably to the manner and direction of the first Collation. If the Father gave the Son the Estate, there was a Tenure created, of the Father, as there was in all Feoffments of the Feoffor, before the Statute of *Quia emptores tenarum*; and it is a Rule in Law, that a man cannot be *heres & dominus*; *Stanford's Exposition of the Prerogative*, chap. 5. fol. 23. B.

If before the Statute of *Quia emptores*, the eldest Son had enfeoffed the middlemost, to hold of him, and had taken his Homage; the middlemost dieth without Issue, the youngest should have had the Land, and not the eldest. Howbeit if there were no youngest Son, or any other Heir, than the Feoffor might claim the Land again by Escheat, and not otherwise.

Another is this for a reason in our Law, why the Children of several *venters* shall not inherit each others Lands: it is told us, it is so because they are but of the half blood to one another, and therefore the Brother of the first *venter* shall not succeed to the State of the Brother by a second *venter* which dies without Issue, But the Land must descend to the Uncle, But this Uncle can be but of the half blood to the Nephew, and the very reason that is given for the Law makes the Law unreasonable. But the true reason why the Brothers of different *venters* cannot inherit each other, is a disallowance that our
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Ancestors, the Saxons, had of second Marriages; they, as most of the Germane Nations, esteeming them as *concubinat*, and at best, but as permitted Fornication: So Tacitus tells us, in his Book, *de moribus Germanorum*, that they did not allow of Second Marriages, *Ne non maritum, sed matrimonium ament, non nuptam sed nuptias*; and agreeable to this Opinion, are descents governed in several Countries in Germany at this day.

This (tho' it is apt to excite all Gentlemen of the Robe, never to acquiesce in any Reason of the Law that is not sense, which if they do, they will forfeit their Reason and Judgment) I should not have been so impertinent as to have mentioned in this Discourse; but that this dealing in Causes without the exercise of clear reason about them, hath brought it to pass, that much of our Law will not sort to Natural Reason and Justice; and this gave one great occasion to the Rise and Growth of the Court of Chancery. Since it came in my way, to shew the Original of the other Courts; and the Reader may wonder, that there is nothing in Antiquity, that gives Authority to so celebrated, and so busie a Court as this is at this day: I will here offer an account of the Rise and Growth of it; which will prepare the way for taking of it down, which is no less a Reproach, than it is a Grievance to the Nation.

There

There is nothing so great a Reproach to a Nation, than to have Laws that are confessedly not good and equal, to continue them; and yet to allow of an Authority to reproach them with Iniquity: that our Courts of Law should be under Rules and Obligations, to pronounce Judgments, which a single Gentleman shall authoritatively controul and condemn, as unrighteous; that Law and Equity should be Opposites; That a Judgment must be made up, and formd in a Case, and what is equal, just and fit therein, must not be considered, though it can be, and will, in another Court have a judicial Consideration.

Our Judges at Law, take themselves bound, not to hear, or regard the Allegations of the Defendants against the Plaintiffs pretence, which ought in good reason to bar them therein; or, at least, qualifie the Judgments, when the same matter shall be heard in Chancery, and prevail either wholly to set aside, or to qualifie the same Judgments.

This is not only to be complain'd of as derogatory to the Reputation of the Wisdom of the Nation; but is insufferably oppressive to the Subject, by the multiplicity of Suits, tedious and vexatious Delays: Nay, by this ill Contrivance, the Expences sometimes equal, sometimes exceed the Value of the Right, which is litigated, and which is worse, the Event of the Suit is very uncertain and fortuitous.

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But this is not all; our Law, it seems, is not a Rule that extends it self to all Causes; and we have Rights confessedly, such, and which can be judicially remedied, to which the Common Law extends no Relief: For a thousand Causes in a year, are for that reason heard in the Court of Chancery.

Two such Reproaches, no Nation but ours hath ever yet incurr'd or suffer'd: For Law and Equity is no where else opposed, and every Right hath his Remedy by the Law of the Country, but ours.

The first great occasion to the rise of the Chancery, was, Feoffments, made upon Trust, to uses in the time of our Warring about the Title of the Crown, to avoid Forfeitures. The Judges, in tenderness to the Condition and necessity of those times, did judge, that an Use was no Right, though most certainly it is: For it is *jus ad rem*, that nothing might be forfeited when it depended upon chance whether a man should be a good Subject, or a Traitor. And the same consideration easily admitted of any Authority that would interpose to relieve against those who would abuse or deny such Trusts; and no body brought into question, that authority, by which a piece of justice, so necessary to the Nation, was administred.

Another great reason of the business of the Court of Chancery, is that which we before-mentioned, that we have not improv'd the
Statute

Statute of *Westm.* 2 C. 24. And a third, is the ill conducting of our Laws: our Ancient Judges were infected with the Monckery of that time, men of no Learning, and of a vain Subtily. The Theology of those times was insipid, and most trifling, and the Administration of Justice, agreeably turned into a vain art of disputing the *apices juris*; and a subtilty was used, too fine for business, and to govern the affairs of Men that governed themselves by none of those Superfineries. They argued without Discourse, or discoursed from positive Rules or Presidents, which were almost the same with them as Rules of Law, and not from the true Merits of the Cause, and its own particular reasons of Right.

And the Common Law, which is *Lex non scripta*, i. e. that which a wise Judicature should declare, upon the consideration of the present Case, was by the Proceedings of our Courts, turn'd into a *Lex scripta*, positive and inflexible; and the Rule of Justice could not accomodate it self to every Case, according to the Exigency of Right and Justice.

But if it were consider'd, that there can be no Prescription against Justice, that no Presidents, where a Right hath not been relieved, can be pretended why it should not be assisted hereafter: And if a matter pleaded in Bar, upon which the Defendant will be certainly relieved in Chancery, may, notwithstanding it

hath not heretofore, be hereafter allowed in our Law-Courts, we should be in a great measure restored to our easie, expedite, cheap, and certain Justice, which the Methods of our Common Law-Courts hath most excellently provided, until a Parliament, sometime, or other, may consider, whether it be not fit to take it quite down, by inabling Courts of Law, to do true Right in all Causes that shall come before them: For nothing renders the Chancery tolerable, but the most exemplary Virtue, and Great Endowments of our present Lord Chancellor, in which he is not like to have a Successor.

But to return to the *Curia Regis*, it was not only the great Judicature of the Nation formally; but it was also materially our Parliament too.

That this *Curia Regis* was not without any more, the Parliament of these times, is evident: first, that the *Curia Regis*, was summoned by a general Writ of Summons, directed to the Sheriffs in this Form, viz. *Rex Vicecomiti Northamptoniæ, &c. præcipimus tibi quod summoneri facias Archiepiscopos, Episcopos, Comites, Barones, Abbates, Priores, Milites, & Liberos homines, qui de nobis tenent in Capite, &c. Rot. Claus. 26 H. 3 M. 7. Dorso.* This must necessarily be this *Curia Regis*, in Distinction to a Parliament.

For that in the Grand Charter of King John, made in the last year of his Reign, it was granted, that *Ad habendum Commune Concilium Regni, de auxilio assidendo, (aliter quàm in tribus prædictis casibus; i. e. Those cases of Aid, to make the eldest Son a Knight to marry the eldest Daughter, and of Ransom, and de Scutagiis assidendis) faciemus summoneri Archiepiscopos, Episcopos, Abbates, & Comites, & majores Barones Regni, sigillatim per Literas nostras. Et præterea faciemus summoneri in generali per Vicecomites & Ballivos nostros omnes alios, qui in capite tenent de nobis.*

At present we make no other use of this Grand Charter, than to prove it a distinctive mark of a Parliament, where the Summons are personal to the Bishops, Earls, and the greater Barons. This Charter of King Johns declares the ancient usage of summoning the greater Barons, by special Summons to them severally directed; for that the Kings before him, as Sir Henry Spelman in his Glossary p. 80. *Propter crebra bella & simultates, quas aliquando habuere cum his ipsis majoribus suis Baronibus, alios etiam eorum interdum omitterent, & ægrè hoc ferentes Proceres Johannem adgèrè sub magno sigillo Angliæ pacisci, ut Archiepiscopos, Episcopos, Comites, & majores Barones Regni, sigillatim per Literas summoneri faceret.* By which it was provided, that all the Barons should have *pro more* Summons to the Parliament, that none of those great Barons should want his several Summons, and they had anciently several Sum-

mons, for in a general Summons no body was excluded. By which it doth appear that the Council at *Northampton* wherein *Thomas of Becket* was brought in judgment, was a Parliament, and not the *Curia Regis*; for that the Bishops had their severall Writs of Summons, which appears in that *Fitz Stephens* tells us as matter of observation, that *Thomas of Canterbury* had not his Writ of Summons, but was cited as a Criminal to answer; which we before observed.

And this was but necessary, that when the Tenents *in capite*, or Barons, which principally at least made the Parliament, were to be consulted about some arduous Affairs, that they should have notice and a solemn intimation thereof, and their presence required and enjoyned, by Writs to them particularly and personally directed.

Besides that, it was agreeable to all the forms of Government then in use, to have their ordinary and extraordinary Council. For, *Omnes Germanicæ Originis Reges atque Imperatores, duplici Concilio antiquitus utebantur, altero statario, qui Senatus dicitur ad res quotidianas, altero evocato, concilium aut conventus ordinum ad res momenti majoris*; as *Grotius* assures us.

Neither can it be denied by any man of modesty, who hath heard any thing of the state of our Government before the Conquest, and that knows that many ancient Burroughs send Burgeses to Parliament by Prescription, and will consider the Records produced by Mr. *Petit*, in his

his very learned and elaborate Book called, *The Ancient Right of the Commons of England*, to prove the Right of ancient Burroughs to send Members to Parliament who represent them; but that such, though not Suiters to the *Curia Regis*, were Members *de jure* of the great Council of Parliament. But the truth is, they are not mentioned in any Record or History of any Parliament, from the beginning of the Conquerours Reign to the end of *Henry 3.* as a distinct part of the Parliament of *England*, their Numbers and Qualities were little and mean, of no consideration in comparison to that great Body of the Baronage that constituted our Parliaments in that time; but our Parliaments seem by the style used in Histories and Records, to be onely the Baronage of *England*. *William* the First in the fourth year of his Reign, *Consilio Baronum suorum* (saith *Hoveden*, pag. 343.) *fecit summoneri per universos Consules Angliæ, Anglos nobiles & sapientes, & sua lege eruditos, ut eorum & jura & consuetudines ab ipsis audiret.* Those who were returned shewed what the Customs of the Kingdom were; which with the assent of the same Barons were for the most part confirmed in that Assembly, which was a Parliament of that time saith *Mr. Selden*, *Titles of Honour*, pag. 701.

Amongst the Laws of *Hen. 1.* published by *Mr. Abraham Whelock*, cap. 2. I find thus; *Forestas communi consensu Baronum in manu mea retinui, sicut pater meus eas habuit.* And after, *Lagam*

Regis Edwardi vobis reddo, cum illis emendationibus quibus pater meus emendavit consilio Baronum suorum. The Parliament is styled *Commune Concilium gentis Anglorum*; and at the same time, *Commune Concilium Baronum*; and also *Clerus & Populus*, Matth. Paris, fol. 52, 53, 54. And this is sometimes called *Communitas*, for that it represents the whole people, and involves their consent. Which appears by 48 H. 3. *Pars unica M. 8. D. Hec est forma pacis à Domino Rege, & Domino Edwardo filio suo, Prælati & Proceribus omnibus, & Communitate Regni Angliæ, communiter & concorditer approbata.* And that *Communitas Regni* hath no other sense than *commune concilium Regni*, and used as a comprehensive term of them that made it, is evident; for that it is said in the second Record, *Si videntur communitati Prælatorum & Baronum.* And again, *Per consilium communitatis Prælatorum & Baronum.* Further, *Magnates & Universitas Regni*, sometimes used for the Parliament, Matth. Paris 659, 666. And after King John's Charter, wherein it was established, that those that were not *Barones majores, qui tenent de nobis in capite*, should be generally summoned. It is observable, that the *Barones minores* are so mentioned, as if the name of Barons were not to belong to them. Agreeable thereto is that we have mentioned in the style of our Parliaments, of *Milites liberè tenentes, & alii fideles*, and are all involved in this general, *Et universi de Baronagio Regni Angliæ.*
Se-

Several Instances of this are in Mr. *Petyt*, aforementioned, p. 111, 112, 113, 114, 115, 116. besides that, many Instances of the like Stile of Parliaments in those times are obvious.

That our Parliaments in those times were thus constituted, is so clear, that it cannot be dissolved: But I do not deny, but upon a change in the Succession to the Crown, there might have been in this time extraordinary Conventions of the People, to declare their Universal Assent, for better assuring such Successor, discountenancing the Rival Prince, and preserving the Peace; as in the Case of *William* the Second, *Henry* the first, King *Stephen*, and King *John*, which hath been usual in other Countreys, in mighty Distresses of State; such were in use amongst the *Jews*. *Josephus* calls such an Assembly, *πάνδημον ἐκκλησίαν*. *Grotius*, in his *Annot.* p. 200. tells us, *Solitos fuisse Judæos interdum in rebus ad summam Religionis, aut Imperii spectantibus advocare ad Synedrium quotquot habere poterant tribuum primores, aliisque honoribus præditos, ut quod constituerunt legis potius a populo probata, quam Senatus consulti haberet auctoritatem*. With the assent of such an Assembly as this; at least King *John* should only (if so) have made this Kingdom Tributary to the Pope; though I believe, what he did in it, he did without, and against the Assent of that Parliament, in which he could only therefore offer to do it. He did no more *effectivè*, than of
Right

Right he could, which is nothing. That which was done, was without the Consent of his Bishops and Barons, as appears by a Letter of his to the Pope, in those words recited by Mr. Petyt, in his mentioned Book, *Cum Comites & Barones Angliæ, nobis devoti essent antequam Nos, & nostram Terram Domino vestro subdicere curassemus, Extunc in Nos specialiter ob hoc sicut publicè dicunt violenter insurgunt.* And by another Letter of his, to the Pope, recited, p. 163. Wherein he complains of the Bishops Disobedience on this Occasion; which I the rather take notice of, that the Cause of our Government might not be betrayed, by depending upon such weak Inferences as those, viz. that there was a House of Commons at that time, which did not consent to the vassallating of the Kingdom, by King John to the Pope: For that otherwise, it could have been validly done. And that, if our present House of Commons, in the same Form as it is now constituted, was not in Being ever after the Conquest, it is not therefore an Essential part of our Government: For if our Government must take its Fate upon such Issues as these, I am sure we shall not long hold it. The greatest Truths are betrayed by weak Proofs, and the clearest Right, sometimes lost, by putting it upon an uncertain or improbable Issue. This is certain, that whatever thing of Government is introduced by the Consent of the Prince, and that Alteration as-
sented

sent to, and embraced, avowed and owned by every man of the Community, by Actions, and other open Declarations of a full Consent; and this continued for Centuries of Years; and in all that time, applauded, and found agreeable to the Interest of the Prince and People, and the Old Government abolish'd and impracticable, the very matter of its ceasing; and it become a thing impossible, as well as not desirable to restore it. I say, whatever Constitution is thus introduced and established, is as unmoveable as unalterable, (or no Government is) as if it had been ever so: For there can be no Government in this World that is eternal; how this Change came, we shall speak to by and by.

But for the sake of Truth, I must confess, that I have no reason to believe, that the Counties, in all this time, had their Representatives in Parliament, by the formality of a Choice. But this is a great mistake, that the People cannot be represented, but by such as are from time to time chosen by them; whenas every Government is the Representative of the People, in what they are to be governed by it, and by their Consent to it in the first erecting thereof, they do trust their Governors with the Rule and Order of their Lives and Estates, for the Common-weal: For Government, as well as Law, is *Republicæ communis sponsio*, to use Bracton's Words. I cannot easily tell which is more eligibl-

eligible for the assuring us of good Men in the Common Council of the Kingdom, whether the Choice, and Designation of a Person thereto by his Character, and a General Rule, or by the contingent Suffrages of the People: But they are, I am sure, as much our Representatives, who are appointed thereto by the Constitutions of the Government, embraced and consented to by the People, as those are, whom the People nominate for that purpose. I know no reason therefore why any should think, that nothing is stable in our Government, but what hath been ever so, and in the same Form; or that any man should be so affrighted with the Objection (as if it made our Government shake, which some slight Antiquaries, for little Learning in Antiquity will serve for that purpose) *That our Parliament was not at all times such it is at this day.* It sufficeth to me that it was always materially the same. When the Conqueror did innovate his Tenures *in Capite*, and made all men of great Estates, Barons; and by their Tenures and Estates, Members of Parliament, we had then such Laws, *quas vulgus elegerit*; and then we had materially our three Estates, though not so well sized and sorted as since. I thought fit to say this, for the preventing the World's being troubled with such Impertinent Labors, and to divert those that thus employ themselves to undertakings more useful to the Publick, and advantageous to themselves.

We

We had then (I say) many great Freeholders in every County, that by their Tenures were Members of Parliament, whereas now we have but two; and though the People did not chuse them, yet the men of that Order seem chosen once for all interpretatively, by the People in their consent to the Government; and they might be reasonably presumed to be faithful to the Commonweal, from their own great Concernments therein. In this Constitution scarce any man that was fit to be chosen, but was without the Peoples choice a Member of Parliament; as now they have more who are fit to be chosen than they can chuse. So that the *Barones minores* were then instead of Knights of the Shire; and the *Barones majores* Bishops and Earls did then as now make the Parliament.

Besides the *Barones majores* and *minores*, there was at this time a distinction between the *Barones Regis* and *Barones Regni*, which I will here explain, to prevent any mistake that may grow thereupon. The *Barones Regni* were Barons by Tenure, and made part of the Government by the Constitution of the first *William*; and so in process of time called *Barones Regni*, because they had by continuance of that Constitution acquired a fixed right to that Honour. But because of the frequent Wars between the Barons and the Kings at that time, they did omit to summon some who were Barons by Tenure, and now duly called *Barones Regni* to Parliament, and

and called others to Parliament that had no right to be called *ratione tenure*, and these they called *Barones Regis*. This was ill taken by the Lords, and was one of the occasions of their War with King John; upon which they did obtain his Charter for remedy as followeth; *Barones majores Regni sigillatim summoniri faceret*. The truth of this as to the fact will appear by the Histories of those times; and that this is the reason of that distinction of *Barones Regis* and *Barones Regni*, doth appear by the recited Charter of King John, where the *majores Barones* are called *Barones Regni*; for the Barons were more concerned for the losing of their Honours, than they were at the communication of the like Honours to others, and with reason; though all Honours are lessened by the numbers of those participate of them.

The inconveniences and mischiefs of this Constitution were very great and very sensible, by making the Government consist of one Order; there was no third to moderate and hold the balance. The Honour of the great Nobility was lessened, by an Equality of Suffrage in the great Council of the Kingdom, yielded to the Tenents *in capite*, and were not so concerned to support the Dignity of the Crown for the maintaining their own, which in that Constitution could not be great. It had the faults of either House, and the virtues of neither: they pressed hard upon the King, and were uneasie and oppressive to the Peo.

People: they were not reverent of the Crown, nor tender of common right. The great Charter provides against the Oppressions of great men, as it doth for bounding the Prerogative. Our mixt Monarchy was out of tune, by the Aristocratical Power of the Baronage, now become too excessive by the policy of the Conquerour, by advancing too great numbers to that Dignity, too great to depend upon the Crown, or to be govern'd by it unassisted. That which the first *William* intended and designed for the establishment of his Conquest, and of the Peace of the Kingdom, made it very easie to afflict bad Princes. But by several steps we recovered, being taught and instructed to it by our Experience, and the sufferance of great Calamities, such a Representative, that might most certainly effect what in all Ages was intended and designed, that nothing should be Law or civilly just, but what the People assent to, by which their Persons and Rights are secured and defended, which is the sole end of Government.

But evident it is, that this more equal & clear representative, which we now enjoy in our House of Commons, grew upon the reducement of the excessive number of Barons, so great that it made them a Tumult rather than an Assembly, and for the reducement of the power of the greater Barons: for in the Parliament of 49 *H. 3.* when but 25 Lay Barons were summoned, tho' in the 41 year of his Reign he numbered 250 great Baronies in
England,

England, we find Writs for electing to a Parliament at *London*, two Knights, Citizens, and Burgesſes, and Barons for the Cinque-Ports: before that time, none were found, nor any Foot-ſteps of Right for the Counties ſending Knights to Parliament; though there is a clear Right appears for the Burroughs to ſend Burgesſes; which we ſhall ſpeak to afterwards.

It will not be impertinent, here to add, that the Government of *Scotland*, which runs parallel almoſt to our *English* Government, found it inconvenient, that all the Tenants in *Capite* ſhould reſort to their Parliaments; and therefore, they were reduc'd in this manner; viz. their *Barones Minores*, or Tenants in *Capite*, in every County, chooſe two of ther own number to Parliaments; which, at this day, they call the Barons for Counties: whereas, all our Free-holders chooſe their Knights of the Shire; and our Elections are not reſtrained to Tenants in *Capite*. And this made it more reaſonable for our Representatives of Shires (together with the Burgesſes) to become, in proceſs of time, a diſtinct Lower Houſe; whereas, their Barons of Shires ſet together with the Lords, and vote in Common with them. The Knights of the Shire, which made the principal part of the Representative of the Commons, having no Relation to the Houſe of Peers, or the Baronage of *England*; becauſe, choſen by all the Feee-holders indifferently, though not Tenants in *Capite*.

But

But to return to our History that deduceth the Change of our Government. That some great matters for publick Good and Establishment of the peace of the King and Kingdom, was treated of in this Parliament, (they did to be sure establish this new Form of a Parliament) will appear by a Form of a Writ of Summons, to the Bishop of *Durham*, to that Parliament ; which I will here transcribe. *Henricus Dei gratia, Rex Angliæ, Dominus Hiberniæ, & Dux Aquitaniæ, venerabili in Christo patri R. Episcopo Dunelmensi salutem. Cum post graviaurbationum discrimina dudum habita in Regno Nostro, Charissimus filius Edwardus primogenitus noster, pro pace in regno nostro asscuranda, & firmanda obses traditus extitisset & jam sedata (benedictus Deus)urbatione prædicta super deliberatione ejusdem salubriter providenda & plena securitate, & tranquillitate pacis ad honorem Dei, & utilitate totius Regni nostri firmanda, & totaliter complenda ac super quibusdam aliis Regni nostri negotiis, quæ sine Consilio vestro, & aliorum Prælatorum, & magnatum nostrorum nolumus expediri, cum eisdem tractatum habere nos oportet; vobis mandamus, Rogantes in fide & dilectione quibus nobis tenemini, quod omni occasione postposita, & negotiis aliis prætermisissis sitis ad nos Londiniis in octabis Sancti Hilarii proximo futuris, nobiscum & cum prædictis Prelatis, & magnatibus nostris, quos ibidem vocari fecimus super præmissis tractaturis, & consilium impensuris, & hoc sicut nos & honorem nostrum, & vestrum,*

necnon & communem Regni nostri tranquillitatem diligitis, nullatenus omittatis Dorf. Claus. 49 H.3. M. II. in Scedulæ.

I strongly incline to believe, That this King did call in the Commons by their representatives, (the *Barones Minores* being discharged) to moderate between him and his Barons, which became after (to be sure, however it was before) the standing Representative of the people. Something like this, was before attempted by King *John*, by this Writ of King *John*, the like of which, is not found. *Rex vicecomiti Oxoniæ salutem; præcipimus tibi quod omnes milites Ballivæ tuæ qui summoniti fuerunt esse apud Oxoniam ad nos à die omnium Sanctorum in 15 dies venire facias cum armis suis, corpora vero Baronum, sive Armis singulariter & 4 discretos milites de comitatu tuo illuc venire facias ad nos, ad eundem Terminum ad loquendum nobiscum de Negotiis Regni nostri; teste meipso apud Written, 11 die Novembris. Dorf. Claus. 15. Johannis Regis. Part 2. M. 7.* But that *Hen. 3.* in that Parliament, had some notable Expedient for the Establishment of the publick Peace and Quiet. His Hopes and Desires of accomplishing it, will appear by the Stile of the fore-recited Writ, if compared with another Writ of Summons, in a Cursory Form, in the 26th. Year of his Reign, which was thus; *Henricus, &c. Venerabili in Christo Patri Waltero Eboracensi Archiepiscopo salutem; mandamus vobis quatenus sicut & honorem nostrum pariter & vestrum*

strum diligitis, & in fide qua Nobis tenemini, omnibus aliis negotiis omissis sitis ad nos apud London, à die Sancti Hillarii, in 14 dies, ad tractandum nobiscum una cum cæteris magnatibus nostris statum nostrum, & totius Regni nostri specialiter tangentibus & hoc nullatenus omittatis.

But shortly, to deduce the History of this Change, (which is but conjectural) under the Authority of Mr. Selden, in which, nothing is certain, but that the Bishops continued in the Change of the Baronage in the same State of Greatness mentioned, the same Order had their Writs of Summons continued to them as before; and, though many of the Regular Barons were after omitted to be summoned to Parliament, yet not one Bishop ever wanted his Summons. This Discrimination shews, That they were now Barons by Writ, as the Lay Barons were, and for the same Reason; that is, because Tenures did not now make them Barons. But such only were so, who had the King's Writs sent to them of Summons to Parliament: So that the Bishops are not now to be reckoned *Barones feudales*, or Barons by Tenure, but *Barones rescripti*, as all Barons at this day, except those by Patent, which are so, without any respect to Tenure.

The Feudal Baronage, as we said, was as large, and as numerous as the Tenures by Knights Service in Chief, which were capable of being multiplyed several ways, for every

part of the Fee however divided, the Services reserved upon that Fee, that were entire and indivisible, were to be performed by the several Proprietors of the several parts of the divided Fee.

The Feudal Baronies besides, were ambulatory, not fixed to Families; but assignable, as Estates, and passed with the Lands. Who sees not, that by this Constitution and Nature of Baronage, a great many mean persons, not agreeable to that high Order, must be entitled to it, and so in truth it happen'd? And hereupon, a Distinction was made first between *Barones Majores*, & *Barones Minores*. The *Barones minores*, soon lost the Title of Barons altogether. This is conjectured, by Mr. Selden, to be before the latter end of King John's Reign, and their legal Stile became *Milites*, or *Libere Tenentes*; which some, upon a mistake, anticipating the Change of the Government, made in H. 3. time, think, when they meet with *Milites*, or *Libere Tenentes* in Parliament, they have found Knights of the Shire, chosen for Representatives in Parliament.

And, if they retained the Name and Stile of Barons, it was now but abusively applied to them; for, their Baronies were in Truth estimable, but as Knights Fees only: and, of this sort of Barons, there remains some to this day.

This

This appears by a Passage in the grand Charter of King *John*, made in the latter end of his Reign, as it is in *Mat. Paris* 343. *Ad habendum commune concilium Regni, de auxilio assidendo aliter quam in tribus casibus prædictis.* (these three Cases of Aid to make the Eldest Son a Knight of Aid, to marry the Eldest Daughter, and Aid of Ransome are understood Heir, as is plain by the Charter) *Et de scutagiis assidendis faciemus summoneri Archiepiscopos, Episcopos, Abbates, Comites & majores Barones Angliæ sigillatim per literas nostras. Et præterea faciemus summoneri in generali omnes alios qui in Capite tenent.* This was one Step to remove these *Barones Minores*, from the Dignity of Barons; which by *H. 3.* were quite discharged, and never appeared after in Parliaments, except chosen Knights of the Shire.

But because I find this great Charter of King *John*, not well understood by several considerable Writers, nor by Mr. *Selden* explained, I will offer my Thoughts, and the rather, because it is not impertinent to our present purpose. The first part to which the part before-recited, doth refer is thus: *Nullum scutagium, vel auxilium ponam in regno nostro, nisi per commune concilium Regni nostri nisi ad corpus redimerendum, & ad primogenitum filium nostrum militem faciendum, & ad primogenitam filiam nostram semel maritandum, & ad hoc non fiet nisi rationabile auxilium;* and then follows, *& ad habendum Concilium Regni aliter quam in tribus casibus prædictis & scutagiis assidendis,*

assidendis, &c. I conceive, that by the first *Commune Concilium*, he means the *Curia Regis*; and that he did grant that out of that Court, he would not impose Escuage, or aid upon his Tenants, except it were those three Cases of Aid mentioned: For Escuage was then and after assessed in that Court, and that properly, as being due by their Tenure, only the Oppor-tionment there was to be made, which was a proper Office for the King's Tenents amongst themselves, until the Statute of 34 E. I. *de Tallagio non concedendo*; in which it was provided, that no Tallage, or Aid, shall be put or levied without the Will and Assent of the Arch-bishops, Bishops, Earls, Barons, Knights, Bur-gesses, and other Free Commons of the Realm; but for all matters other than those three mentioned Aids and Escuage, which were due by Tenure, it should be done by that *Commune Concilium*, that is, his Parliament; and he there declares, how he would have it summoned as to his Ba-ronage, who in that part of his Charter, were to receive their Satisfaction; and for the Li-berties of sending Burgeses to Parliament, they are likewise confirmed in the same Charter; and therein provided for. So that I am per-suaded, that the *modus Parliamenti*, in King John's Time, was in the said Charter de-clared.

It was probable, that before this Charter, there was some Law to declare who those *Ma-jores*

jores Barones were, and who those Tenants in Chief were, that should be accounted now, no longer Barons; and after the Tenants in chief had lost the Honor of a particular Summons to Parliament, and the Stile of Barons, it was less difficult for those Great Barons, to procure a Law to exclude the rest wholly from having any Right to sit in the Parliaments under the name of Tenant in Chief only. And to this purpose, doubtless, saith Mr. *Selden*, some Law was afterwards made, that none should come to Parliament, as a Baron, (that is, by vertue of his Tenure) but such as should have several Writs of Summons directed to them; in which number, not only all those of the Ancient and Greater Barons were comprehended; but others to whom Writs should be directed; which is in effect, that no Tenure should any longer make a Baron of the Kingdom; but that the Writ of Summons only should make a Baron.

It is not improbable for the reasons aforementioned, that such Law was made the 49 *H. 3.* and farther, for that we find, that the Abbot of *Leicester*, in the 26 *E. 3.* was discharged from being summoned to Parliament amongst other reasons, that he was not summoned to Parliament before 49th. year of *H. 3.* and after that *Interpotalis vicibus*; as if part of the Constitution had been that those of the Ecclesiasticks, who at that time were accounted the *Barones Majores*; so declared by having Writs of Sum-

mons to Parliament, should have Writs of Summons to Parliament, thence after in Succession: And herewith agreeth Mr. *Cambden. Brit. fo.* *Henricus tertius ex tantâ multitudine quæ seditionosa & turbulenta fuit, optimos quosque rescripto ad Comitum Parliamentaria evocaverit, ille enim (ex satis antiquo scriptore loquor) post magnas perturbationes, & enormes vexationes, inter ipsum Regem & Simonem de Montfort, & alios Barones, motas & sopitas? statuit & ordinavit quod omnes illi Comites & Barones Regni Angliæ quibus ipse Rex dignatus est brevium summonitionum dirigere venierent ad Parliamentum.*

C H A P. XVI.

SO that it appears clearly, that the Feudal Baronies about this time were quite discharged so far, that no man by a feudal Barony had any Right to sit in Parliament; and those that were feudal Barons before this time, by the Alienation of their Baronies afterwards did not cease to be Barons: But for that the *Majores Barones*, and such as had then Writs of Summons, and were appointed to make the House of Lords for after time, were then Barons by Tenure: It continued an Opinion some time, that no man was bound to answer such Writs of Summons; but those that were bound thereto by their

their Tenures; thence it was, that after this Constitution, many that were feudal Barons before, have taken a Liberty to entail their Baronies with the Lands that were held *per Baroniam*, upon the Heirs Males, whereby the Heirs general, or next Heir Female were excluded; and an Heir of the half Blood hath enjoyed the Honor with the Lands by vertue of the Entail. We will trouble the Reader with one Instance of this kind; and that is as late as *Q. E. William Lord Paget of Beaudesfert*, entailed the Baronies of *Longdon* and *Haywood*, by Fine, which descended to *Henry* his Son and Heir, who had *Elizabeth*, his Daughter and Heir died, 11 *Eliz.* after whose Death, *Thomas*, Brother, and Heir Male of *Henry*, entered into the Baronies aforesaid, and was summoned to Parliament. This was allowable, because the Honor of the Name and Family was thereby better supported, and the Office of a Baron continued in the Family; and the Duty of it better performed by such direction of the Descent.

And we do also observe, that after the reason of being a Baron from Tenure did cease, the following times kept the Old Form of Speech, & *tenere per Baroniam*, was used commonly to denote a man a Baron.

That the Law is as we have said, appears for that an Issue at Law, whether Baron, or not, ought to be tried by the Parliament Records of his Summons and Session there as a Baron,
and

and not by the Records of the Exchequer to prove the Tenure. I will not therefore trouble the Reader with what is reported to us in our Year-books, nor my self in reconciling the seeming disagreements there about this matter, onely thus, that the Judges have sometimes spoken *cum vulgo*, and not agreeable to the true notion of the Law, and that they did not judge according to Law in the case of *Thomas de Furnival*. But, the Barons being anciently first so by Tenure did so stick with the Judges, that they allowed *Thomas de Furnivals* Plea, that he did not hold *per Baroniam*, to discharge him from being a Baron, though he had been summoned as a Baron, and sate in several Parliaments as such. But of this more hereafter.

For that which now made Parliamentary Barons was, the receiving of a Writ of Summons to Parliament. Before the 49 *H. 3.* The Bishops were of the number of those that were *maiores Barones*, and had Writs of Summons to Parliament among the rest of the great men, before the making of the Law aforesaid; and they by this new Constitution became Barons for them and their Successors, not by Tenure any longer no more than the great Lay Barons, but by virtue of the Writ of Summons, and by the afore remember'd Constitution and Law made some time about the 49 *H. 3.*

And though the Lands of the Bishops in the time of the Conquerour, which were put under

der that Tenure, be alienated or exchanged as they might have been, I am sure if they are not before the Statute of Queen *Elizabeth* put a restraint upon them, yet the Succession of the Bishops to their Baronies remains.

It is a question I know, whether a Bishop can demand his Writ to Parliament, before the restitution of the Temporalities, upon his Consecration: there are valuable Opinions on both sides; but if the restitution of the Temporalities must be first made, it is I conceive upon no other reason, than that he is not completely Bishop before that is done, no more than a Rector is a complete Rector after Institution before Induction be made; though he ought (I conceive) to have his Writ upon Consecration, because upon vacancy of the See, the Guardian of the Spiritualities used anciently to have a Writ of Summons to Parliaments; as Diocesans themselves.

And now the Baronage Secular is affixed to Families, and the Spiritual Baronage to the Office and Succession. And now Birth designs the Temporal Baron, and Consecration of the Bishop designs the Spiritual Baron; nay single Election without Confirmation or Consecration. If elected onely, they were summoned to Parliament by the addition of *Electi*; if confirmed and not consecrated, then they are in the Writ of Summons styled *Electi & Confirmati*. And Mr. *Selden* further tells us, that there never was
any

any that had the Title of a Bishop in *England*, and of the Kings Creation since the *Normans*, but was a Baron of Parliament ; and though the Regular Barons, and such of them who had Writs were discharged upon their Prayer, and omitted to be summoned ; Yet the Bishops by reason of their Spiritual Dignity had necessarily a right and voice. The *Archiepiscopi, Comites, Barones, & alii Magnates*, in ancient Parliamentary Writs of Summons, do ordinarily express and comprehend the whole Baronage, without naming the Abbots and Priors, which must be signified by the *alii Magnates*. Which I the rather note, because the *Folio* Author, a Gentleman very easie and ready in Inferences, doth conclude, that because such Writs mention *Magnates*, besides Bishops, *Comites, & Barones*, (which he too suddenly concluded were comprehensive of the whole Baronage) doth thence argue, that a Writ of Summons of any man to Parliament doth not make him a Baron ; and from thence would have it inferred, that the Bishops are not so, (though they are expressely mentioned, and first in order, and cannot in reason be reduced to that meanness of rate and quality with those that fall under an *Et cetera* ;) and from hence would have it concluded, that they may, when the King pleaseth, be dismiss'd that House, because there were anciently some Grantees that had Session in Parliament now discharged.

Besides we do observe, that another sort of great men may be meant by the *alii Magnates*, that is to say, famous men of the Clergy, not Bishops, and other men of great name for wisdom, of which there were some summoned in most of the ancient Parliaments, not intended thereby by the King to be made noble, or advanced to the state of Baronage; for there were distinct clauses in the Writs of Summons, to signify the Kings purpose therein. The Writs directed to such as were not intended thereby to be made Barons, as the Judges, Attorney General, Kings Serjeant, &c. was, *Quod intersitis nobiscum & cum cæteris de Concilio nostro*; and sometimes *nobiscum* onely, *super præmissis tractaturi, vestrumque consilium impensuri*: whereas that to the Barons was, *Quod intersitis cum Prælatiis, Magnatibus, & Proceribus, &c.*

But, as Mr. Selden observes, that custom of sending Summons to great men (not Bishops) to Parliament, did cease after the clause of *Præmunientes* (by which Convocations were summoned by Bishops to meet with Parliaments) grew in use, in the Bishops Writs of Summons to Parliament. Of which excellent Provision we shall have occasion to speak to hereafter.

All the Baronage, both Spiritual and Temporal, *de jure* ought to have Summons now to Parliament, without respect to Estate or Tenures.

There

There is no man now, noble by his Acres, a sort of Nobility, that this refined Age will not allow of. The King, according to the Constitution of H. 3. afore-mentioned, may now, by Letters Pattents, or Writ, erect a new successive Barony (as well as hereditary) as was done by H. 8. The fifth year of his Reign (for that the Baronage of *England* was now affixed to Family and Succession, and not to Tenures) he by his Letters Patents did then grant unto *Richard Bamham*, Abbot of *Tavestock*, in the County of *Devon*, the Abbey being of his Foundation and Patronage, and to the Successors of the said Abbot, *Ut eorum quilibet qui pro tempore ibidem fuerit Abbas sit & erit unus de Spiritualibus & Religiosis Dominis Parliamenti nostri hæredum & Successorum nostrorum gaudend. honore privilegio & libertatibus ejusdem.*

This the King might well do, because, the Abbot was of his Patronage, and the Successors were therefore to be elected and collated by the King; for, that was the Inducement and Reason of Kings and Sovereign Princes advancing Bishops and great Abbots to the degree of Baronage, making them members of the great Councils of their Kingdoms and Principalities, as is before observed, because such Abbots as the Bishops, were made always, and appointed by the Sovereign Prince.

And here we may take notice by the way, of the Reason, why the *Episcopus Soderensis*,
or,

or, the Bishop of the Isle of *Man*, is not summon'd to Parliament, which I shall give you in the Words of Sir *H. Spelm.* in his Glossary, *Baronum appellatione non omnes hodie apud nos censentur Episcopi ut pote Soderensis in insula Manniâ; quod de Rege non tenet immediate at de Comite Darbiæ.*

Nay, it is most observable, That this Honour of Baronage, or being a Member of the House of Peers, was so inseparable to the Office of a Bishop, after the afore-mentioned new Constitution of the Baronage, That the Guardians of the Spiritualities of Bishopricks in the times of Vacancy, and the Vicars General of Bishops being beyond Sea, were summoned to Parliaments by the same kind of Writs as the Bishops were summoned. Of this, Mr. *Selden* doth assure us; Titles of Honour. 2 *Edit.* fol. 721. But this Honour lasted no longer than this legal Substitution, and Vicarious Power. If they had Right to sit in that House, in respect of their Temporalities, the Guardian of the Spirituals, or the Vicars General, would not have had Writs of Summons to Parliament. But, if the Kingdom had not had a great Opinion of that Order, it would not have been provided, and put in use; that in Vacancy of the See, or Absence of the Bishop, rather than that great Council would want one Bishop utterly, or the Interest, Authority, and Consent of any that had Episcopal Authority, they admitted the Substitute, by whom

whom that Office was executed and administred for that Interval only.

When Baronies were feudal, the person, tho' in respect of his Land, was noble; his great Estate and Interest, and the other general Presumptions that attend opulent Fortunes, made the Possessor noble in his Person.

Anciently the Estate; of late, the Discent, in the Temporal Baronies; and, the Succession in the Spiritual Baronies, place the persons respectively in the *Census* and Rank of Baronage: but there is no Nobility but what is personal, nor can be in Nature. All the persons in the same Order of the publick *Census*, are of the same Quality.

Neither are Bishops to be accounted less Barons, or less noble, because they enjoy their Baronies for Life only, no more than a Tenant for Life of an hereditary feudal Barony could be so accounted. Feudal Baronies being considered as Estates were alienable as Estates, and as Estates would suffer Limitations, and admit of particular Estates for Life. No man can say we had no personal Nobility in the time when there was no other Baronage than Feudal. How then can it be said, that the Bishops Persons are not noble, though they should be accounted only Barons *Ratione Tenuræ*, as certainly they are not in proper speaking, at this day, neither can it be objected against their personal Nobility, that a Bishop may be degraded; for, so may a Peer
for

for more Reasons than a Decay of his Fortune and Estate.

Which matter, I the rather insist upon, for that the great Mr. *Selden* committed an Error; by not considering, that the ways and means, by which, persons derive and come to be of the Order of the Nobility and Baronage, can make no Difference in the Baronage; but, thence he offers a Reason (which must needs be a Mistake too) why Bishops shall not be tryed by Peers, in Capital Crimes, because these are personal; and, his being a Baron, is *Ratione tenuræ*, and not of personal Nobility. But this he wrote when he was young, in his first Edition of Titles of Honour, which was in the time of King *James*.

But, can there be a harsher and more incongruous thing said, than that there is any other Nobility than what is personal? Can Land be noble?

This that I have said, is to prove, That the Spiritual Lords are of the Baronage of *England*, such as it is now constituted; and, they do not, cannot remain in any Reason or Understanding, Feudal Barons, after the *Ratio Baronagii* is changed, and if they could remain Barons *Ratione tenuræ* at this day; yet, they ought to have all Preheminencies and Priviledges of Barons.

But, true it is, that they are another sort of Nobility, different from that of the secular Lords (though equal in all the powers of Baronage; and besides, have precedency in Honour) and therefore make a distinct State from them; and one of the three Estates, or *Ordines Regni*.

Besides that, by the way, we have destroyed the Force of the Arguments used by the *Folio*, against the *Jus Paritatis* of Bishops, and their Competency to try a Lay Peer, which we shall speak to more by and by.

C H A P. XVII.

IN the King, and in these three Estates, is placed the Peoples Security, and the Care of the whole Community: from every of them they have distinct, just, and reasonable Expectations, though the third State of the House of Commons, hath carried away, and almost ingrossed the name of the Peoples Representatives, though they are only the Peoples Representatives, to act for them, in matters wherein the People are left at perfect Liberty; and concerning which, there is no Order taken in the Constitution of the Government.

This is truly *Our Government, a King, and Three Estates, the Lords Spiritual, the Lords Temporal, and the Commons*, by their Delegates and Representatives for the purpose only to treat about matters, in which, the People have Power to deliberate, and are, and ought to be redress'd.

This is the Forme of all the Modern and *Go-thick* Governments, planted in *Christian Europe*. *Guntherus* expresseth three Estates thus:

Pre-

Pralati, Proceres, missisque Potentibus Urbes.

The great men of Estates, *Proceres*, were sufficient to take care of their Interests and Dependents, which made the Body of the Country. But then there were Cities or great Towns, in which were great Bodies of Freemen, men of Wealth and Trade, that were little concerned in Lands or Tenures, which we call *Liberi Burghi*, which our Neighbors call *Hans Towns*: And our Kings seem to have by Prerogative a continuing Power to declare Towns, when they arrive to be great, peopled, and rich, *Free Boroughs*; and thereupon they acquire a Right to send Delegates to Parliament: And this appears, for that many Boroughs that send Burgesses of to Parliament, have no other Foundation Right, but the King's Charter; in which he grants, *Sit A. de Cetero liber Burgus*, I have seen some of these Charters as ancient as King *John*. These Charters could have had no such Operation, but by vertue of some Ancient Establishment in the Government: We have no History of its Commencement. King *William I.* that he might have the assistance of all the States in Parliament, put the Boroughs under Tenure by Baronage. How many of the Burgeage Tenures were of that sort, we know not; but it is probable, all that at that time sent Burgesses to the Parliamentary Conventions (by what name soever they were then called) the Burgesses of the *Cinque-ports*, are still called Barons.

And we know, that the Borough of *St. Albans* was put under that Tenure, and in that Right challenged them to Burgeſſes to Parliament, as *Dr. Brady* acknowledgeth. But the reason why we have no remembrance of the Tenures of Boroughs to ſend Burgeſſes to Parliament, is that which we have here proved, *viz.* the ancient reason of Baronage, *viz.* by Tenure, did ceaſe about the time of *H. 3.* And conformably the King might require Boroughs to ſend Members to Parliament, without mentioning in his Writs the duty of their Tenure; and by declaring them free Boroughs, give them that Privilege, though not oblig'd thereto, by any Tenure created upon them. So that it is evident, that before *H. 3.* our great Councils, or Parliaments conſiſted of three Eſtates, though they all paſſ'd under the general Stile of *Baronagium Angliæ*; which I thought fit to demonſtrate, that our Parliaments, or great Council of the Realm always conſiſted of three States,

Corol. From this, that the King's Prerogative being ſo, *viz.* to have power to declare Free Boroughs, which he uſeth by his Letters Patents: The Rights of choſing their Burgeſſes to Parliament, belongs to all of the Community, and cannot be reſtrain'd to fewer Electors by their Charters: For *Jura ordinaria non recipiunt modum.*

The Remainder at leaſt of this Form of Government, continued in all the Countries where in the *German Colonies* made their Conqueſts, and

and planted themselves, as will appear to any body that will consult the Republicks, and those plentiful Quotations that hath been made by a Learned Author in his Book, published since this was written.

I cannot but wonder, since this our Constitution hath been oftenmost authentickly declared; and every one knows, that the Government is materially so as we have said; and it is agreed by all, that the Government consists of three States; that yet we know not where to find 'em.

There is much Art used to give Countenance to, or rather to form an Opinion that the King is one of the three States. It is now almost come to be an Opinion; and inso-much as it is an Opinion, it is an Error. This Error, such as it is, is endeavored to be improved to the Destruction of the Government. It is nurs'd up carefully, and is to gain Reputation and Credit with the People, by the Authority of great Names; and when it is grown popular, it is designed to take the least next Advantage against the Spiritual Lords, to dismiss them from their Bench, as no necessary, or essential part of the Government.

There was, it's true, an ill-pen'd and inconsiderate Address, made by the House of Commons only to the the King in 2 *Hen.* 4. to desire him to make Peace between the Lords, and therein they say, that the three States of Parliament,

are the King, the Lords Spiritual and Temporal, and the Commons: But this is the first time, that an Address of a House of Commons, was so nicely considered: And that the Form and Letter of it should be the measure of Law and of the Government. There was also a phantastick Letter, written by *Stephen Gardiner*, printed it seems in the Book of *Martyrs*, wherein that Bishop talks of three States, in which he must needs reckon the King for one: For he could not leave him out of the Government; and he had no more Christian Graces than Faith, Hope and Charity, which he attributes to this Ternary of States of his own making. But if he had four of those Graces, there had been four States, if six of those Graces, to have match'd them in number, he would have found three States in the House of Commons, viz. Knights, Citizens and Burgessees, and have made six States.

It seems too, King *James* made a Speech in Parliament, wherein he was pleased to use his Logick; and liked, it seems, the *Ramistical* way of *Dichotomies*. The truth is, he had more Logick than a wise King could tell how to bestow. For in that Speech, he saith, The Parliament is composed of a Head and a Body, himself and the Parliament. This Body is sub-divided into two parts, the upper House, and the lower House. The upper House into two, Lords Spiritual and Temporal; the lower House into two

two, Knights and Burgesſes. The Citizens were left out for the ſake of his *Dithotomy*. His Method was to proceed by the way of two's; and therefore 'twas impoſſible we ſhould here in this Speech of any three whatſoever; yet this Speech too, is produced againſt three States diſtinct from the King.

Befides, they tell us, that in one of the late King's Declarations, drawn by (then) a young Gentleman, but of great hopes, and afterwards a very great Man; the King is called one of the three States. This Gentleman was very probably miſled into that Miſtake, by a Book called *Nomotechnia*; wherein it is ſaid, that the King, Lords and Commons are the three States; a Book of Inſtitutions for young Students, which was never yet allowed for Authority in the Law; nor ever had the Honor to be cited in our Courts of *Westminster*.

Theſe Miſtakes, or whatever you will call them with the Authority of the *Octavo* Author, are united together to form an Opinion, that the King is, but the Biſhops are not one of the three States, which will be a very diſhonorable Error: For that it will lead us into a Miſtake of our Government; and which is much worſe, for that it hath a tendency to ſubvert it, that is, to depreſs the King, and to ſuppreſs the Biſhops.

It is an Indign thing, and not to be ſuffer'd, that we ſhould loſe our Government by Surreption, and be made a *Babel*, by dividing and

confounding our Language. To prevent this mischief, we have declared our Government, from the very Reason and Nature of the Structure thereof, to consist of three States, that is, three different Orders, which make the Great Council of the Kingdom; whose End and Business, is, to administer Council and Auxiliaries to the King, who is intrusted with the executive Power of the Government and Laws. And besides, now we will produce great Authorities, to put this Mistake out of Countenance, and to prevent its gaining any farther Authority with the People.

For Errors of this nature, in process of time, turn into Truth, and things prove to be so at last, as the Error and Mistake first bespake them; and this our Lawyers know well enough, with whom 'tis a *Maxime* (it belongs only to them, and matters within their Province) *Communis Error facit Jus.*

And first, for this purpose, we will mention the Stile that the Parliament used, which was convened by the Authority of *Richard* the Second, he being then about to relinquish the Crown to *H. 4.* This Parliament, in transacting so weighty an Office, had reason to consider and know who they themselves were. They, without doubt, in all their Proceedings in this High Matter, used their true, as well as biggest Stile, which was that of *States.* *Walsingham* tells us, *Sede Regali tunc vacua Procuratores Regis* Richar-

Richardi, Archiepiscop. Eborac. & Hereford. Renunciationem dicti Regis & cessionem omnibus statibus Regni tunc adunatis ibi publice declararunt. And again, *Quoniam videbatur cunctis Regni statibus super dictis Articulis singulatim, ac etiam communiter interrogatis.* And again, *Ordinati sunt Commissarii ex parte statuum & Communitatis ejusdem Regni.* Observe here, that the King is none of these States; that they are called all the States, which signifies more than two; that there is mention of States, besides Community; and therefore, it was then understood, that there were two States in the Lords House.

But afterwards he recites us the Form of a most important Instrument, which follows, *In Dei nomine, Amen, Nos, I. Episc. Assavensis, I. Abbas Glasconiensis, Thomas Comes Glocestriæ, Thomas Dominus de Berkley, Tho. de Epingham, Tho. Gray Miles, Willielmus Thirning Justiciarius, per Pares & Proceres Regni Angliæ Spirituales & Temporales, & ejusdem Regni Communitates, omnes status ejusdem Regni Representantes Commissarii, ad infra scripta specialiter deputati, &c.* By which it is most clear, that the Government was then understood to consist of three States, of which the King was none, as he cannot be with any Congruity.

I R. 3. Rot. Parl. apud Westm. die Veneris 23 Jan. it appears, that a Bill was exhibited coram Dom. Rege in Parl. Wherein is contained, That several Articles on the behalf, and in the
name

name of the three States of the Realm, viz. Lords Spiritual, Temporal, and Commons, were delivered to the King. And farther, that the said three Estates were not assembled in form of Parliaments; therefore be it ordained by this present Parliament, that the Tenor of the said Articles, delivered as aforesaid, on the behalf of the said three Estates out of Parliament, &c. Now by the three Estates assembled in this present Parliament, be the same ratified and approved, Ac idem Dominus Rex de assensu dictorum trium statuum Regni & Autoritate predicta, omnia & singula premissa, in billa predicta contenta concedit, & ea pro vero & indubio pronunciat, decernit, ac declarat. This was in like manner, an Act of Parliament, for declaring the Right of the Crown to be in Rich. 3.

In the Statute made 2 H. 4. the Word *State* is used plurally, and for more than two, of which the King was none, to signifie the Parliament, as appears *cap. 15.* And so it is also in 4 Hen. 4. *cap. 4.* in which these words are, *Sith it is the desire of all the States of the Realm, that nothing shall be so demanded of our Sovereign the King. He will that all those who make any Demand, &c.* So that hereby it is evident, that in the Understanding of that time, there were three States besides the King. But to spare the Reader the trouble of the mentioning the Records at large, that testifie the Parliament to consist of the King and the three Estates, viz. Lords

Lords Spiritual, Lords Temporal, and Commons, I will refer them that doubt to the Collection made in Mr. *Pryn's Index* to Sir Robert Cotton's Abridgment, under that Title (who himself was of this Opinion, which nothing but the Evidence of the truth of the thing could have form'd: His great Knowledge in Records; and that he is known, not to be partial for the Bishops, make him of great Authority, pages 10, 11, 12, 13, 14, 17, 329, 384, 325, 281, 392, 567, 607, 710, 712, 713, 714.

And farther, in the Time of Queen *Elizabeth*, in an Act of Parliament, in the first Year of her Reign, made for the Recognition of Her Queen of *England*; which was an Act of State, and of the whole Community; and therefore most requisite it was, that that Parliament should give themselves their right Stile. It is said, *We your said* (the Lords Spiritual, Temporal, and Commons in Parliament assembled, was said before, to which this doth relate) *most loving Subjects, representing the three States of your Realm of England.*

The Nature of the Government came directly at their Times, under Consideration of the Parliament, which is an Assembly that cannot be mistaken in the Constitution of the Kingdom, in any Question of such a Nature, when they will deliberate and consider. This mighty Affair required them to consider who they were,

were; and what was their Constitution. Now (if at any time) they are to use that Stile, that denotes their Power, and declares the Government. The Stile of the three *Eſtates* of the Realm, it ſeems, is ſo ſacred and great, and not for ordinary uſe, but that it is uſed upon ſuch occasions as the Recognition of the Sovereign Princes, and in declaring Kings. This Stile is moſt certain declarative of the true Conſtitution, and the great Stile and Title of the Lords Spiritual, Lords Temporal, and Commons of *England*. A *Miſnomer* now would be as great a Soleciſm, as to ſee the Nobles and Prelates without their Robes, and proper Cognizances, at the Solemnities of a Coronation.

By the due comparing the Statutes aforemention'd, wherein the Lords Spiritual, and Temporal, and Commons are called the States, and alſo the Representatives of all the Eſtates of the Kingdom. We may be enlightened into a great Miſtery of State; for that the Lords Spiritual, and the Lords Temporal, and Commons, are called the three States; and alſo the Representatives of the States give us to underſtand, that every one of them is entrusted for the other; and with the Conſervancy of the whole Community, and are all in their proper Miniſtries deſigned to the Common Good; and each of them have Dependencies and Expectancies from the other, in the due Diſcharge of their proper and diſtinct Offices. And that the Lords Spiritual,

ritual, and the Lords Temporal are Representatives and Trustees, for the Peoples Good, and the Common-weal, as well as their own. In like manner, as every Parliament man, for a particular Borough, is a Representative of all the Commons of *England*.

To which we will adjoyn another great Authority, and that is of Sir *Edward Coke*, 4 *Inst.* fol. 2. who tells us, that the King and three Estates, *viz.* Lords Spiritual, and Lords Temporal, and Commons, are the great Corporation and Body Politick of this Nation. This was the Opinion of his Old Age, when he was most improved in Knowledge; and when he did not flatter the Prerogative.

Besides, to clear this point, we may observe, that the Stile of Acts of Parliament, that hath mostly obtained, is this, *viz.* *Be it enacted, &c. and by, and with the Advice and Consent of the Lords Spiritual, and Lords Temporal, and Commons.* This distinct mention of the Lords Spiritual and Temporal, is Cognizance of their being distinct *States*: For observe, there is no particular mention of Knights, Citizens, and Burgeesses, in Acts of Parliament; because they are all of the Commonalty, which is but one State. They are all involved under the general Name of Commons: And so would certainly the Lords, both Spiritual, and Temporal have been in the general Name of Lords, if they had not been distinct States, and so accounted.

ted. The Stile of Acts of Parliament, would have been by the Advice and Assent of the Lords and Commons assembled in Parliament. And the ancient Stile of Parliament, before the House of Commons was divided and constituted apart from the Lords House, was *Clerus & Populus*, *Clerus & Magnates*; as may be seen by *Eadmerus*, and *Matth. Paris*, and the Writers of those Times: So that the *Clerus*, or Bishops, were always a distinct State in Parliament.

For the letting in Light upon all that hath been said in this matter; and for farther clearing it, and to reconcile the Differences in the Stiles of the Parliament; and that they may unite in their Evidence, and not seem to thwart one another: It must be remembred, that that which is most expresse and particular, is most scientificall, and more exactly instructive, most distinct and true; and intends to inform us exactly in the very Nature of the thing; and therefore cannot be derogated from, nor prejudiced by what is more general, or less distinct.

It is hence therefore evident, that the Lords Spiritual and Temporal, are taken for distinct States, as they are: For they have their distinct Interests, and for several ends and purposes became parts in the Government. They have their several Ministries and Advantages to the Government apart, and come into that House, by several ways of Designation and Appointment.

ment. The Prelates care, besides that which is common between them and the Temporal Lords, is that of Religion, and the Affairs of the Church, and the whole Order Ecclesiastical, by which the People are to be ministred to in their highest Concernments; which are Reasons very sufficient to reckon and account them a distinct State.

And now we have asserted to the Prelates a *Jus Paritatis* in the House of Lords, for that they are complete Barons, as we have likewise proved them a distinct State.

The Baronage of *England* is the House of Lords. Additions of Title give Precedency, but no Superiority or addition of Power. The Baronage is one Order and Rank, and the highest in the *Census* of the Government, the manner of the Promotion, the Ends and Interests of the Government in the advancement of the Bishops, though several from those that advanced the Temporal Lords to their State and Honour; yet to the same degree they are promoted, they are both Members of the same great Council, of the same great Judicature, and are therefore by their long continuance most duely styled *Pares Regni*. And moreover the Bishops are considered as to their Order and Office Ecclesiastical, and another care incumbent upon them besides that of the Baronage; and the Orders that belong to the consideration of Heralds do signifie, that their Office of a Bishop doth not lessen the Dignity of their Peerage.

What

What is it then that makes this present Question ? The Bishops have the reason and nature of the Government of their side, they have used such a power when they have pleased, it was never denied to them, and their right hath had the most solemn Recognition that can be made.

The Canon could not abridge and restrain their right, and their true Character qualifies them not onely to the degree of an unexceptionable Judge, but renders them most fit and desirable. For besides their Wisdom and Justice, common with that of the Temporal Lords, they are intended of the greatest tenderness and compassion, and must be so if they comport themselves with agreeableness to their Character and Function.

They are not ordinarily engaged in the Factions of the Temporal Grandees, and Religion being their business, they are more under the powers of it ; that being their glory and their first greatness, that which promoted them to their Secular Honour and Dignity, and that which must support it. Their Interest is Religion, and therefore they are the more obliged in all their outward acts to comport with it. They, out of an universal charity, understand, that it is mercy and compassion to the innocent to punish the nocent person ; and yet they can, in the administration of punitive Justice, attemper the severities of Laws with the mercies of Religion, and use Compassion to the Criminal, when they

they do not depart from the unrelenting Rules of Law out of regard to the publick peace : and by such demeanour they may reconcile the Office of a Judge with that of a Priest, which some have thought incompatible. Πολιτικὴν ἀρετὴν ἱερωσύνη συνάπτειν τὸ κλέειν ἐστὶν ἀσύγκλωστον. *Synes.* But they are no more inconsistent than Power and Authority, which united makes a most venerable Magistrate, and gives him the greatest advantage of serving the Community.

—— *Peragit tranquilla potestas
Quod violenta nequit ; mandataque fortius urget
Imperiosa quies.*——

C H H P. XVIII.

AND such a Judge would I chuse ; but we must take such a Judge as the Law appoints. *Magna Charta* is objected against the Bishops right in the question, which saith, that *Nullus liber homo capiatur, &c. nec super eum ibimus, nec super eum mittemus nisi per iudicium parium suorum.* The Objector omitted to add or consider what follows, *viz. Aut per legem terræ.*

But the Statute of *Magna Charta* is no Literal Law, as every body knows, but intending to confirm the Common Law, it is upon the matter *Lex non scripta* ; it alters nothing that was the

Common Law before, but that being found out declares what *Magna Charta* establisheth. And therefore Peers shall be tried by Commoners in Appeals, notwithstanding the Letter of *Magna Charta*; for otherwise Peers could not be tried at all, nor no Justice done in Appeals, which is the Suit of the Party and not of the King. Privilege must be always set aside, rather than a failure of Justice shall be allowed. So that the Law before *Magna Charta* and since, whatsoever it was, must determine this matter.

The Provisions that the Law hath made, that the Nobles and the Commonalty shall not intermeddle to judge any persons, not of their Order, is a most prudent Establishment, without which neither Order, Justice, or Peace could be preserved. The Envy of the Commons would render them unfit Judges of the Peers; and the Animosities of the Peers would render them unapt to sit in Judgment upon a despised Commoner.

Besides that, otherwise the Dignity of the Order of Peers would suffer, for the Superiour can no more be judged with any congruity, than blessed by the Inferiour. This is a reason big and wise enough to be assigned, and worthy of a wise Government and Polity. And to this reason the words of the Statute of 25 E.3.cap.2. de *Proditoribus*, do point, *De ceo soit probablement atteint de overt fait per gens de leur condition.*

And

And therefore it seems to me, that according to the Reason and Design of the Law, which declares the Law in particular Cases, that Bishops being Barons, and of the Peerage of *England* and of that Rank and Order, they ought to be, tryed by those of their own Condition: And the denial to them of this Priviledge, which is annex'd to, and is a resultance from the Dignity of their Order, is a departure from *Magna Charta*, and not agreable to the Provision of the 25 E. 3. c. 2.

But it was never an allowable Exception to a Judge, that the Judge hath not so good an Estate, or other Advantages of Fortune, equal to the man he Judges, to forfeit, in case the Judge be a Capital Offender; upon which reason, the *Folio Gentleman* grounds his Reasonings against the Bishops being Tryers of Peers. He argues the Bishops incompetent to try a temporal Baron upon this reason; because the Bishop hath only a Peerage for his Life to forfeit.

But who can be satisfied with such fine and slender Reasoning, or entertain an Opinion that is not better grounded?

I would not be thought to argue or maintain, that Prelates are so fit to be appointed by the King's Commission, to try a Temporal Peer, in the Court of a Lord High Steward, out of Parliament: when a select Number of Peers are to be appointed for Tryal, it is most convenient, that those of the same Species of the Baronage,

should be chosen for that purpose, for many reasons: but for a Tryal of a Temporal Peer in Parliament, which is the Establishment and Appointment of the Governm^t, and not of the King's special Designation (notwithstanding the reason of the *Folio*) for Reasons herein alleadged, a Bishop is a most fit, legal, and competent Judge.

But I have taken too much notice already of the Errors and Mistakes of the *Folio*, and his false Reasonings; I am weary of such Animadversions: I shall proceed now to the end of my Discourse; without making any more Reflections.

It is already cleared, that the Bishops are compleat Barons, that they are of the State of the Baronage; and it can have no Consideration how they came by it, nor how they held it for the *Modus tenendi*, doth not alter or diversifie the Honor.

And for my part, I cannot find reason to believe, but that the Bishops had, or might have had originally their Tryals, by Peers; and that it was their Right in Consequence of their being placed in that Order and State (besides that they have a Precedency to the Temporal Baronage) to be tried by the Baronage, because the Law for the reason afore-mentioned, appoints Tryals *per Pares*. But the contrary practice is the Strength of our Adversaries, in opposing the Peerage of Bishops, which we shall therefore now consider of.

It

It is certain, that in all Tryals, wherein Bishops are concerned, whether Plaintiffs, or Defendants, in Actions real, as well as personal, whether the Lands of the Church are concerned or not, a Knight is to be returned upon the Jury, that is, to try the Issue. I will not trouble the Reader with Law Cases, any Gentleman that pleaseth may examine the Truth of what I say.

This privilege therefore cannot be in respect of the Lands of the Bishoprick (as the *Folio* would have it) but of the persons of the Bishops, a respect to the Order and Peerage of the Bishops.

It is the same Privilege, and as large as the Temporal Peers enjoy in this matter, which is, that the worthiest and best of the Commoners, which are Knights, should be impannelled upon a Jury, where either a Spiritual or Temporal Baron is concern'd; besides that, I find a single Remembrance as high, as 13 E. 3. in *Brooks Tryal* 142. (the Reports of that year are not printed) of the Bishops Right of Peerage in a Capital Cause; the Book is *Evesque est Peere de Realme, & serva try per Peres in Crime*.

But how this Right came to be discontinued, and to lose remembrance, we shall presently account for; but I cannot think it Sence, which some of our Lawyers have said for this purpose, that a Bishop, his being a Baron, is *Ratione Tenure*, and not personal; which is all one as to

say, that the Bishop is a Baron, but his Person is not a Baron; but his Peerage and Baronage, is no other in truth, than an Honor accumulated upon the Person of a Bishop, together with his Office.

But to excuse them, they thought themselves obliged to give a reason why Bishops are not (as the Law is taken) to be tryed by Peers, but by a Common Jury, which grew into practice by accident, and was not ever so in probability; but certainly is very irregular, and extream incongruous; and therefore to give a good reason, for it is too hard a task to be undertaken; and he that will undertake to give a reason of that which is unreasonable, and go about to prove a thing fit which is incongruous, must likely speak things equally incongruous, absurd and unreasonable.

But to speak what the truth is in this matter, the Bishops and the whole Order of Clergy did challenge to be exempt from the Jurisdiction of Secular Courts; but the Bishops, as is objected, never waved their *jus paritatis*, upon Arraignment in inferior Courts. They only never insisted upon it: For they had a better way to escape, by setting up the pretended Rights and Priviledges of their Order; and that Church, for exempting themselves from the Jurisdiction of the Temporal Courts; and by this means, they did escape unpunished for the most part.

Though

Though there were several Abatements made by the provision of the Laws, and the Wisdom of the Judges, to their unreasonable pretences therein ; yet they always got off by their pretended privilege, if not with impunity, yet with some protection at least from Justice ; and farther they thought perhaps they might at least avoid being thought guilty of the Crimes objected, whilst they used this pretence for a reason why they would not make a Defence.

And sure in all Offences but Treason, they escaped with their Lives before the Statutes that took away the benefit of Clergy, in some Cases of the greatest Guilt, and even in the Case of Treason, the Criminal ever had the Advocacion and Intercession of the Church-power and Interest, because the privilege they contended for, was so great and valuable a Concernment (as they esteem'd it) to the Order of the Clergy.

But by this means, the memory of the Use of this Right and Privilege was lost, and the Detestation of a Crime in a Prelate, provided him a speedy and ready Justice, such as was at hand ; and at length, Bishops themselves, unadvisedly, and being born down by the Common Opinion thus grounded and occasioned, did submit to Tryals by Juries.

It is enough to have given an account, how this Anamolous piece of Law came about. But Anamolous Cases never make Rules, nor destroy any.

any. Nor is it to be drawn into consequence, whatever is a departure from the Establishment to destroy it quite. Positive Constitutions, of which no Reasons can be given why they are so, can infer or argue nothing. Reason cannot make Law, though it is a fair inducement: but our Reason is most perversly imployed, when it proceeds from the Irregularities that happen in Human Affairs, and are shuffled upon us by length of time by violence and iniquity, and a heap of Accidents to argue us into more, and to refix that which is regular, and remains firm. *In quo quis peccat, in eo punietur.* Is it not enough, that the Order now suffers a diminution of their dignity, by reason of the contumacy of the Popish Prelates their Predecessors, and that their Refusals to submit to Temporal Justice are visited upon the Succession? Severe enough this is in it self.

But why should any man expect, that this Age in consequence of this should be persuaded, and reasoned to exclude the Bishops out of their remaining right? 'Tis no more to be expected, than that a man that hath one hand withered and mortified with the Palsie, should be persuaded to cut off the other for conformity.

We know how the Prelates fell from their primitive Dignity, of being tried by those of their own Order, and were submitted to be tried by Juries of Commoners. It would be therefore consonant and agreeable to the Dignity of Barons,

rons, and Lords of Parliament, (for such the Bishops are) that they be restored to their ancient right in the matters of Trials, as mistaken Law is rectified by an Act of Parliament. A wise Act of State it would be, to reintegrate the Honour of the Baronage of *England*, the whole Baronage suffering dishonour by a mutilation of so Honourable a Privilege in one of the *membra dividenda* of that body, whilst the Bishops are thrown to common Jurors. Especially since the incongruity thereof hath given occasion to some men, to question one another of the *jura paritatis*, which belongs to the Prelates, and to dispute their right of Session in that House, in one of the most important Concerns of the Government.

But however this Irregularity is discoursed, it doth not affect the Right of the Prelates now in dispute; for though Bishops are tried by Commoners out of Parliament, as the Law is now generally taken; yet that they are to be tried by Peers in Parliament our Adversaries do not deny. And that they may and ought to sit in judgment upon Temporal Lords in Parliament in Capital Causes, we have clearly proved. So that the Reciprocal of a Bishops being judged and judging in Capital Causes in Parliament is intire, and in this they continue duly *pares*.

But that it may not depend upon our Adversaries Concessions, that Bishops may be tried by Peers in Parliament; for he is not always constant

stant to himself, and may take back what he hath yielded ; we shall here subjoyn a short demonstrative proof, that the Bishops ought to be tried by Peers in Parliament. And that they have been declared and taken for Peers, and under that Character tried ; when if they had not been reckoned and deemed Peers, they could not have received Tryal in Parliament ; and it is thus :

Edward the Third had prevailed with the Lords against their good will to condemn the Earl of *March* ; Sir *Simon Beresford*, *John Mautrevers*, *Boys de Boyons*, *John Devard*, *Thomas de Gournay*, *William Ogle*, for the Murder of *Edward the Second* his Father and the Earl of *Kent* ; all of them Commoners but the Earl of *March*. The Lords were afterwards sensible of the Injustice and Irregularity of their Proceedings, in judging and condemning Commoners ; and for the avoiding of the like for time to come, an Act of Parliament was made which followeth, viz. *El est assensu & accord per nostre Seignior le Roy, & tous les gents en plein Parlement, per tant que les dits Peres come Judges du Parlement pristerint en le presence nostre Seignior le Roy, a faire & a rendre les dits judgments passant du Roy, sur aucun de ceux que n'estoient pas leur Peres, & ce que encheson de murdre de Seignior Lige, & destruction de celuy que fu sires de Sank Royal, & firs du Roy, que per les dits Peres, que ore sont ou les Peres que ferreront en temps avenir ne soient,*
mes

mes tenus ne charge a rendre judgments sur autre que sur leur peres ne a ce fair mes eiont les peres de la terre poer eins de ceo pur tout Jours ore venu soient discharges & quietes & qui les avant dits judgments ore rendus ne soient ensample nen sequence en temps avenir per quoi les dits peres puissent estre charges desore judges autres que leur peres contre la ley de la terre si autiel case deveigne, que Dieu defend. / Rot. Parl. 4 E. 3. 11. 6.

This the Author of the grand Question concerning the Judicature of the House of Peers, would have but an Order of the House, and no Act of Parliament, because it served his purpose to have it so; but for no other reason which he offers in that Book: but that it was an Act of Parliament, will appear by a Record, which my worthy Friend Mr. Petyt, a most Industrious and Sagacious Enquirer into the Records of Elder Times, hath furnished to me, which is a Writ directed to the Barons of the Exchequer, wherein the afore-recited Record is mentioned, and called an Act of Parliament, viz. *Rex Thes. & Baronibus suis de scaccariis salutem; mittimus nobis sub pede sigilli nostri quædam Judicia in Parlamento nostro apud Westm. nuper teni per Comites, Barones, & alios Pares Regni, super Rogero de Mortuo Mari, & quosdam alios redditæ, necnon quondam Concordiam per nos & Pares prædictæ, necnon Communitatem Regni nostri in eodem Parl. to factæ super premissis mandamus quod Judicia & Concordiam prædictæ, in Scaccario nostro prædictæ*
coram

coram vobis legi & publicari, & ibid. seriatim, in Rotulari, & de cetero ibid. observari Fac'. Teste meipso apud Windsor. 15. die Februarii, Anno Regni nostri quinti, adhuc Brevia directa Baronibus de termino, Sancti Hilar. anno 5 E. 3. R. 33. penes Rememor. Domini Regis in Scaccario.

To compleat our Argument, the *Concordia* appears now an Act of Parliament to the purpose, that the Lords should not give Judgment upon others than their Peers; yet we find the Bishops afterwards judged in Parliament, and that in times near the making of this Act, when we may be allowed to presume they knew this Law (and besides the practice hath been conformable to the Law, since, as our Adversary confesseth) and particularly to mention no more, the Bishop of *Normich*, in the 7 R. 2. And *Thomas Arundel*, Arch-bishop of *Canterbury*, 21 R. 2. both for Treason, were tryed in Parliament, by Peers; which Cases are before mentioned to another purpose.

There was likewise an Act of Parliament, made 13 E. 3. n. 7. that the Nobles of the Land should not be put to answer, but in open Parliament, by their Peers: but two years after that Act was repealed; otherwise we should not have since heard of Tryals of Bishops by common Juries in Capital Causes. And when the Lay-peers can again procure and provide for themselves such a Law, they will not, I hope, envy the Bishops, if they find them therein included.

CHAP.

C H A P. XIX.

BUt after all that hath been said, it will be yet necessary to advertise the Reader for informing and settling a true Judgment of the Right of the Cause, that in Questions of this Nature, we can only arrive to a moral Certainty, which is made by incomparably the greatest probability. That we cannot be answered, but by producing something, at least, equally probable to all the several parts of our Discourse that are to the question, if by any Objection they should render any one part of our Discourse doubtful, they would do nothing, except they can do so to all the rest; which can be done only by offering something more probable. For when many probabilities are concurring to prove the same thing, they do not singly stand upon their own Credit; but they are all assisted by their Conjunction, and give Aids mutually to support every one single probability. This is but necessary to be said, for that I see this Question will be kept up and defended, with Obstinacy, Passion, Interest, and unreasonable Contention.

And farther, that it is very undecent, that a question of this Greatness, concerning a matter grave and important, should be endlessly vexed

vexed with trifling Objections of the *Nequam ingeniosi*. To prevent therefore the Caprice, Capricions, Cavillations, trifling Criticisms, forcing of a Grammatical Sence of Words, against their true and easie meaning, most agreeable to the subject matter, to the occasion of speaking of them, and their probable intendment, and to the understanding of the Times when they were spoken. And that we may be no longer, or more troubled with their Opposings to that which is fairly probable, an imagination of something barely possible, and which otherwise doth appear notoriously false. That Objections neither from the loose Stile, especially of partial Historians, nor from Records of Matters dark and obscure, which leave us in doubt of their true meaning, and therefore can be no ground for Argument; nor from the various sence of words, which they make to stand for this or that, as it serves their turn. At which rate nothing will be certain, because few words have one single determinate Sence, may any longer continue the Subterfuge of a desperate Cause, and matter of endless Dispute. I appeal to the World, whether such like Objections deserve an Answer, (for to some of these Topicks, whatever shall be produced by our Adversaries will be reduced:) And whether they are not rude and imperious to the Dignity of the Right in question, to draw it to a Tryal, by such mean and incompetent ways, and unjust measures,

asures, as they are otherwise in the Management of this Question, to the persons of those that are concerned in it.

It is with passion to be resented, that so noble a Question should be tryed by such means, and incompetent ways of Probation, and by such unnatural measures, which can be endured by none but such, who have no measures of Right, but an agreableness to their own Projects; and who are upon the search of Colors and Pretences, to change and alter our Government, or hurt it in a Vital part, and begin with the Bishops, to take down our Government.

C. H A P. X X.

I Have farther this just Caution to add, for the warding of some other undue prejudices in the Consideration of this question, that our Government did not continue the same after, and before the Conquest; and that the Government upon the Conquest, hath received since many beneficial Alterations. That the Bishops Right must be considered in Analogy to those several Alterations, and in consequence, they ought not to be considered as Barons by Tenure, when Tenure ceased to be the reason of Baronage. The contrary whereof, I find insisted upon, and made the reason, why Bishops must

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must not be tried by Peers. And the same reason will serve to eject them out of the House at the Kings pleasure; because forsooth several Barons by Tenure have been omitted in Summons to Parliament, and no Lay Baron now (they say) is summoned upon that score; but for that he is a Baron by Writ or by Patent, which makes a permanent Nobility in their Families.

But that which is now our Government, in what it differs from what it was anciently, as it is not less rightfully our Government because it was not ever such, so it deserves our greatest zeale to defend it because it is much better.

Governments are (I am sure ours is) *εὐρημα βρεῖ καὶ χροῖον*, form'd and fashioned and refined by long experience: they are not perfected as soon as made, they have their Infant state as well as Men. The elder and first times are the Childhood of Government, and of the World; *Antiquitas seculi iuventus mundi*. It is egregious folly in any man, to attempt to reduce us back again to the rudeness of the first Ages, and to all the inconveniences that have been discharged and filed off insensibly by Experience and Wisdom the daughters of Time, in a long series of Ages. We neither eat, drink, nor cloath our selves, nor build after the manner of our Ancestours, but according to our improved Inventions.

Unde datae populis fruges & glande relictae?

Cesserat inventis Dodonia quercus Aristis.

Claud. de raptu Proserpine.

It

It is time ill spent by some of the Antiquaries, to go about to refix the present established Government, by endeavouring to find out the Records, wherein it appears to have been other, of which we have some published, and are threatened with more. But they will have no other effect (I hope) than to provoke us to give God thanks for the wisdom of our Forefathers, and that they have left us a Government much better than what they found, more just and peaceable, and better established for a lasting continuance : Though they perversly design it as an Artifice to overturn the State, and to evacuate our most refined and wisest Constitutions. For that they can find something before then, they would note them to want Authority and Justice. We ought (say they) to have recourse to the primitive Laws of the State, which have been abolished by unjust Customs and Usurpations. This is a Game at which we are sure to lose all, nothing will be found just in this Balance. And by these means some base Factors for Slavery are contriving the ruine of our Liberty : but this they will effect when they shall have persuaded us to suffer again all the incommodities and courtnesses of Life, which our Ancestors suffered because they were no better instructed :

Frugibus inventis ad glandes velle reverti.

The great change that was made in the Baronage of *England* which we have observed, was remedial and healthful. Its Goodness doth

appear by the thorough Cure it made of our Disorders: for we have not since relaps'd into these Evils, from which we recover'd by that Change. It was Legal, and with full Consent of the whole Community: For it was introduced without Noise, without Opposition or Dispute; nay, without Observation: So that we hear not how it was done; but only perceive the Change. These are sure Signs, that we arrived by this Change, where our Government did at first design us; and that we were agreeable to this Alteration, to its first Intentions. That all Parties herein received their Satisfaction, and found their Interest, that no body was aggrieved at it, neither did it raise Wonder in any man; it was every man's Desire and easie Expectation, which I believe are the true Reasons why this Change is not more remark'd in our Histories. But pity it is, that through the Injūry of Time, and (what is reasonably suspected) the Iniquity of Corrupt Ministers; that we want our Records of that time, which could not have fail'd, telling us, the whole Secret, by what means the Inducements thereto, the Methods whereby, and the exact time when we made our Alterations in our Government, materially, and in its essential parts always the same.

Of this our Records, if they had been preserved to us intire, would have inform'd us; but alas, we have but a few Remains of them.

Apparent

Apparent rari nantes in gurgite vasto.

And of those that have arrived us, many are but References and Recitals in other Records, not the Original Records themselves, by which the Original Records escaped an utter Oblivion against the Will of our Civil Expurgatories.

But of such that remain, the most laudable Use of them, is, to give Authority to the present State of our Government; and we ought with good reason to interpret them in an agreeableness to the present Establishment, because the Change we suffer'd, was easie and natural, *ex Hercule pedem*, to invert the Proverb: For it is easier to know what Foot will fit *Hercules*, than to fit an *Hercules* to a Foot given.

CHAP. XXI.

THough our Government hath always consisted of the same constituent parts; yet they have been ill sized, and proportioned and unduely placed, not well joyned or united, or so blended, that neither could perform their Offices or proper Functions.

The Baronage of *England* was an over-grown part, and did by its Excess and extravagant Bulk, disorder the whole Oeconomy of our Government; and became it self less useful. The Ho-

nor of the Baronage was lessened to nothing by the Numbers thereof; they did not find themselves so much obliged, to support the Majesty of the King, for the Preservation of their own Grandeur, as our great Barons are in our present Constitution. The People were in some sort represented by them, as they were a great Body of the Chiefest Free-holders; but they had a power to oppress them, and they were not obliged by so strong a Tye, and plain Duty to a care of the People, because not chosen by them; and by that Choice, put under a more clear and strict Trust of taking care of their Rights. In this Constitution, neither King, Lords nor Commons had their Ends; and therefore would not have the old Constitution revived, if it were possible.

When the Representatives of the People, which make the House of Commons, were joyned with the Lords, and sat in one House, they could not discharge that Office of a Representative, so well, as since they are divided from them and make a distinct House. They could not well use that Freedom of Speech and Debate, under the Observation of the great Lords, upon whom the Principal Gentlemen had great Dependencies. Their Consent was often very improperly such; for he only truly and naturally consents, who hath entire Freedom to dissent, *Si vis scire an velim, effice ut possim nolle.*

In

In the granting Aids for the Support of the Government, and Defence of the Kingdom, a Matter of the greatest Importance, the Clergy, Nobility, and Commons stood divided, and could not, as the Ancient Constitution was, by one Act of State, be regularly and proportionably taxed, according to the Exigency of the Affairs, and their respective Abilities; but those three Orders taxed themselves in such measures as they pleased, which made the Kingdom *Geryon*-like, a Monster of three Bodies.

Their several Concessions, by this means, not likely to be always equal, and in the whole not competent to the instant necessity.

The Bishops, Abbots, and other Ecclesiastical persons of the *Saxons* time, held their Lands free from all Secular Services; besides, *Trinoda Necessitas*, viz. Expedition, i. e. Supply for War, *pontium & arcium constructio*. But King *Ethelbald* did grant, that the Ecclesiasticks should be freed from all publick Charges, except for the Building and Repairing of Castles and Bridges, *Ingulphus*, pag. 853. The like Immunity was allowed to the Clergy of the Empire, by *Honorius* and *Theodosius*, *Lib. 4. Cod. Just. de priv. Dom. Aug.* By the Great Charter their Priviledges were confirmed. And for this reason the Clergy have taken themselves not of Right chargeable to Aids granted to the King by Parliament. This Exemption hath been en-

vied to them, and made matter of Reproach, though unduely in after Ages. But notwithstanding this Exemption, they have aided the Crown with Supplies frequently; yet in such manner as asserted and saved their ancient Priviledge of being exempt, that is, they would not suffer themselves to be involved in a general Law; but of their own Freedom and Will, gave to the King; which Concessions were notwithstanding not legal, unless confirmed by Parliament, to whom belonged always the power of judging of the Freedom and Ends of giving Aids and Benevolences, and the necessity that required them. But in the last Ages, they have, for their Commendation and Honor, waved their pretences of Priviledge and Exemption; and for the sake of Common Justice, and the Publick Weal, for avoiding, being thought less in their Duty to the Publick, than their Order required. And for the better ascertaining, and more equally adjusting the Parliamentary Aids, they have submitted to be taxed by Acts of Parliament.

The Commons in Parliament we find as late as *Henry 7.* taxing only the Commons, and that by Indenture between them and the King (This Form of Grant, is utterly exclusive of the Lords Power, to charge the *quantum*, times of Payment, or ways of Levying of the Aids granted) wherein they subject all Lands to the Levies thereof; but the Lands of the Lords in
Parlia-

Parliament, or Land amortis'd to the Church. Such an Indenture was made in Parliament held at *Westminster*, 10 H.7. and is pleaded at large in *Rastals Entr. fol. 135*. But of late our Government hath cleared it self from that grand inconveniency.

The Commons in Parliament, and those whom they represent, being far the greatest Proprietors, they reasonably challenge it their Right, to propound all Aids, and appointing the Levies and Methods of raising them, which (because it must be agreed, that the Commons in no congruity can tax the Lords authoritatively, or impose upon them) must have *civilem intellectum*, that is, the Commons in a Bill of Aids do propound, that they will agree on the behalf of the Commonalty, that they shall be taxed as the Bill propounds, if the Lords for their part will agree the same.

C H A P. XXII.

NEither was our ancient Government without great faults and inconveniences in the conduct of Religion, the principal care of all Governments on the one side, by confounding Administrations, which should have been kept distinct; which was the fault of our Government in the *Saxons* time, and by utterly dis-

joyning and severing the Church and State, and not tying the Ecclesiasticks to a just dependency upon the State, which was the Evil of after times ; that is to say, the Ecclesiasticks were left to themselves to convene Councils, and to make Canons, without any dependence upon, or relation to Parliaments. The Constitution was such in the *Saxons* time, that the Synods or Councils which govern'd in Religious matters were the same, with their great Council or Parliament: By these means all the Rules and Orders that were made in the matters of Religion were not Canons, which are of the nature of Councils, but Laws, and obliged those that contravened them to temporal punishment. The Church was thereby turned into a Dynaſty, and Religion was againſt its nature promoted by force, which can onely truly obtain by perſuaſion. And whereſoever this is in practice and uſe, the Clergy to the great ſcandal of their Office, will be entituled to all the Severities that ſhall be inflicted upon Diſſenters. Heretofore the Councils of the Church, and the Authority of the State, were unduly confounded.

After that we had Legatine Councils, and Provincials convened by the Archbishops as they pleased, not under the obſervation and controll of the Civil Power; by which many inconveniences were occaſioned, many embroilments of the people happened, the Authority of the Prince leſſened, and Civil Rights en-
croached

croached upon ; the validity of several good Laws made in Parliament disputed, clamoured against, and sentenced as unlawful ; for want of a due subservience and dependence of the Ecclesiastical Conventions on Parliaments. We had *Imperium in Imperio*, or at least a Kingdom divided against it self. This fault in our Government was help'd by *Edward* the Third, our *English Justinian* ; he in the several Writs of Summons of the Bishops to Parliament, made it a settled Rule, that the clause of *Præmunientes* should be inserted, requiring them therein to warn respectively, *Priorem & Capitulum Ecclesie vestræ C. ac Archidiaconos, totumque Clerum vestræ Diocesis ; quod iidem Prior* (which if a Cathedral is the same as a Dean) *& Archidiaconi, totusque Clerus vestræ Diocesis, quod iidem Prior & Archidiaconi in propriis personis suis, & dictum Capitulum per unum, idemque Clerus per duos Procuratores idoneos, plenam ac sufficientem potestatem ab ipsis Capitulo & Clero habentes, prædictis die & loco personaliter intersint, ad consentiendum his quæ tunc ibidem de communi concilio ipsius Regni nostri, Divinâ favente Clementiâ contigerit, ordinari.* And accordingly the several Bishops, in obedience to such like Writs of Summons to Parliament to them directed, summoned or warned their Deans or Priors, Archdeacons, and the Clergy by their Proxies ; which have since made the Convocations, or the Ecclesiastical Council of the Kingdom, and are to meet at every Session of Parliament,

ment, but to debate nothing but what is propounded, and to publish nothing for Canons without the Royal Assent. So that they are to act nothing but under the observation of Parliament. This Convocation or Ecclesiastical Council (other allowable Synods we have none) ought not to convene but when a Parliament is sitting, and continue no longer than the Parliament.

We ought to observe herein, and applaud the excellent wisdom of our Government, that in the very constitution of it hath provided for the peace of our Church, by silencing Controversies, which can never be determined with any effect; such a wise expedient and course, as the best instructed Christian Emperours did take by their Edicts, prohibiting publick Disputations about subtil and nice Questions; as *Constantine, Martianus, Leo & Anthemius, Andronicus, Heraclius*, to mention no more. None but mad men and extravagantly presumptuous, or utterly ignorant of Church History, will ever hereafter go about by Acts of Councils to end Controversies, but rather to shame the Dogmatizers out of their contentious zeal, by shewing how little the ends and designs of Christianity are concerned one way or other in such Questions, in which those that are most learned know least; and a little learned ignorance would discharge most of them from any longer troubling the world.

And

And farther, we must observe, to the Honor of our Nation, that it is so religiously wise, as to commit the Care of conducting Devotions, ordering the Decency of Publick Worship, and censuring the Manners of Clerks to the Bishops, and the Principal Clergy ; whereto their Religion, Wisdom, Devotion and Moderation, bespeak them the fittest Persons.

No less remarkable is the Wisdom of our Government, that it doth not make that, which is properly the matter of Canons, the Subject of their Legislation ; and thereby subject us to Temporal Punishments, where the Admonitions of the Church and her Censures, are more proportioned Remedies to the disobedient and forward. Laws oblige us to punishments, govern us by Fear and Awe, oblige with Reason or without Reason, because they are Laws. They admit of no Ecclesiastical Relaxation or Dispensation, and bind when the reason ceaseth. In whatsoever thing relative to Religion a Law is made, the matter is taken out of the Hands of the Church-men, and no longer under their Government, whose Government is a Ministry, not Empire and Dominion. They can institute nothing but what they may reasonably persuade, *Nihil tam voluntarium quam Religio*. Lact. We can have no more Religion or Truth than we can persuade. Religion and Truth are to be promoted by moving the Will. The Church rules by persuasion, and her Canons oblige only

ly for their Reason, Religion for the sake of our own Edification, and the Edification of others, the Peace of the Church, and Reverence of our Pastors and Teachers. Canons in their own Nature are Temporary, for the present necessity and convenience, variable and mutable, as the Edification of the Church shall require, and the prudence of the Guides of the Church shall determine; and therefore what is properly the Matter of Canons, ought not to pass under Laws which are rigid and inflexible, peremptory, punitive and ungovernable. And this magnifies the prudence and Christian Temper of our *English* Prelates.

C H A P. XXIII.

LAstly, I observe what a dangerous Opinion our Judges sometimes had in reference to the Baronage of *England*, viz. that it was in the Power of the King, or in any Nobleman, once summoned by Writ to Parliament, as a Baron, at the pleasure of the King, to relinquish his place, and determine the Nobility of his Family. Which Opinion not being corrected, would have made that State ambulatory and moveable, upon which the whole Frame of the Government depends. The Baronage of *England*, is the Stabiliment of our Government, and
may

may be soon made too weak to support the other greater parts of the Building, that rest upon it, and are supported by it. It is this that moderates between the two contending Interests of Prerogative and Liberty; and prevents those violent Concussions, which would otherwise unavoidably happen.

— *geminum gracilis Mare separat Isthmus,
Nec patitur conferre fretum si terra recedat,
Ionium Ægeo frangat Mare. —*

Of what Importance therefore is it, that we should be a Kingdom that cannot be shaken, as much as Humane Wisdom can provide, and frail Materials will admit? That our Baronage should not hold their places precariously at the King's Pleasure, and be deposed at his Will. And yet our Judges, after that Honor was fixed in the Families of those whom the King should appoint by Writ, to hold that Honor and Place in the Commonwealth, remembering, that Baronage was at first a Service imposed *ratione tenuræ*, by Will. the Conqueror : Our Judges, I say, more able to judge of Private Rights, than in Questions of State and Government, being under a prejudice, from the Consideration of the Original of our Baronies, did allow the Plea of *Thomas de Furnival*, who had been called to several Parliaments by Writ, that he was no Baron, for that he held not his Land *per Baroniam*, vel *partem Baroniam*, and therefore adjudged him no Baron. *Communia de Term. Sancti*

Sancti Hillarii, Anno 19 E. 2. Rot. penes Remem. Dom. Thes. in Scaccario pro Thoma de Furnival. Seniore exonerando. But of this Cause they were not properly Judges, the Lords themselves are the only Judges of the right Constitution of that House; and they have anciently challenged a Writ of Summons, *de jure, & debito Justitiæ* for themselves, and Descendents; where they have been once summoned by Writ, and answered that Writ, and taken their place accordingly. And the whole House doth constantly refuse to act, until the Lord that complains of an Omission, hath a Writ of Summons sent him.

What Apprehensions was had of this Honor, by *Thomas de Furnival*, and others in his time, I know not. But it might have been then, and since it is well understood, that that place which they sustain in the Government, is of the highest Trust; and the Benefits which redound therefrom to the Commonweal, the greatest: For they make the Government as well gentle and good, as firm and stable.

These Noble Lords *Marchers*; are placed between two great Contending Powers, to preserve the due Boundaries and respective Limits, and oblige them to Right and Reason, by their Courage and Wisdom. And for their Encouragement and Reward, deserve the highest Honors; and that they should be as they are, immortal in their Families. And accordingly it was resolved lately in the Case of the Honor of *Purbeck*,

beck, in the Lords House, that no Fine or Surrender of the Honor of a Baron can extinguish it: But that notwithstanding it shall continue to his Heirs and Descendents: And that upon the clearest and most important Reason; for that the Constitution of the Government, ought not (as in its own Nature it cannot) to depend upon the Will of the Prince, nor of Single Persons, that bore a part in the Government for their time, nor be prejudiced in Succession by their Lachesse.

The same Priviledge doth belong to the Spiritual Baronage, the successive Nobility of this Realm; and a Writ of Summons to Parliament can be no more refused any of them, or any of their Successors, than it can to any of the Temporal Baronage. I cannot but upon a review of our Government, applaud our happiness that we enjoy, and were born to so excellent a Government, without our Sweat and Contrivance; which was arrived to by several slow Steps, and beaten out by the long experience of former Ages.

But it is a portentous thing, and of ill, very ill Omen, that a Government so Venerable and August, so Wise, Beneficial and desirable, should be assaulted with peevish Dotages, forward Petulances, and childish Cavillations: And that some Brain-sick, foolish Antiquaries, Rakers in the Rubbish of Time, should imagine, that they can barter away our Govern-
ment

ment for mouldy Bread and clouted Shoes : But these we have before obviated. Another sort we have before engaged, to consider in their ill Treatment of the Bishops in their handling this Question of their Right we now defend. To which I will now proceed.

C H A P. XXIV.

FOR I am not now insensible of the great Prejudices that lie against the Right of the question, from those Calumnies that are thrown upon the Order : And that no reason, not the clearest Demonstration will be admitted to any Degree of satisfaction, until this be removed. Men's understandings are mingled with their interests and Passions. It is a hard matter not to see the person in the Cause ; and if the person is dis-esteemed, his Right cannot be equally favour'd : Nay which is more, if our Adversaries can persuade the World, that the Bishops will abuse this their Right, nothing will be able to keep off this Conclusion, that they have none.

We must duly therefore here complain of the dishonest Artifice used by the Gentlemen, that we have undertaken in this Cause, *viz.* That they seek all occasions of lessening the esteem of the Bishops ; and of them, they speak what they will. He that can believe what he will,
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is an Infidel, and he that does what he will, is a man of no Conscience; and he that can speak what he will, wants Truth and Candor. But of a culpable sort of Wilfulness we finde these two Authots very blameable.

We must complain of these fierce disputants; that they strive unlawfully, they contend with passion, and a keen Animosity; they strike as well as argue, they lay about them right or wrong, to assault and wound the Persons, whose Right they oppose. A wound and Dishonour do they give to their own hurt.

Animosque in Vulnere ponunt.

The first and greatest Injustice they do to the Cause against all Right and Reason, of which sure they must be self-condemned, is an odious Remembrance of any thing culpable in the whole Succession of Bishops, in the times of the lowest Degeneracy of the Christian Religion, and of the height of Papal Usurpation and Tyranny; which was more heavy in those times, upon the Rights of the Bishops, than upon those of the Crown.

When Princes thorough their own Weakness, or to serve their Interest, or to support their defective Titles to their Crowns, or for obtaining dispensations from his Holiness, for an unwarrantable Marriage, or for other Ends and Reasons could not, or would not defend the Bishops and their Rights.

The very order of Bishops in those times was attempted upon, to be annulled by that Oecume-

call Usurper. It was disputed and boldly maintained in the Council of *Trent* that the Bishops were only *jure Pontificio*, and had no Authority in the Church, but such as his Holiness would vouchsafe them. It was endeavoured to make them but his Substitutes: He pretended Powers to create and translate them, diminish or enlarge their Dioceses; gave them more or less Authority, did suspend them also, and deprive them; and pretended, that they had only a vicarious and precarious Authority from him; and in such Measures as he should think fit to limit and appoint. Were not Provisions and Reservations first made by the Pope, upon Benefices belonging to Churchmen? The Statute of the 25 E. 3. gave their Presentations to the King, when the Pope usurped upon them, as a Fortification against his Usurpation and Invasion. Did he not urge his Canon upon them, that they should not *agitare judicium sanguinis*, so much talk'd of in this Question, that he might strip them out of their Secular Greatness, that he might the better go over them, and tread upon them and their Ecclesiastical Rights?

Is there no Consideration to be had by those Gentlemen, in this Case of the *Error temporis*, or *Vitia Temporum*; They will snatch at this un-duely when it seems for their turn; but can they think that any Bishop, under a Protestant Sovereign, will ever return under the old Yoak?

And

And yet the business of Provisions, Reservations and Dispensations, and of Pluralities, must be laid at the Bishops Door (yea, though Dispensation of Pluralities, is now established by Statute Law,) with all the Usurpations exercised by the Pope, the First-born of the Children of Pride, to which they willingly-unwillingly were forced to submit.

But how unrighteous a thing is it to load the Order it self with all the Miscarriages of a long Course of Succession? as if the Faults of the Bishops in all Ages, did stick to their respective Chairs, and had passed into the Office it self.

But it is no wonder, that they remember the Faults of those Bishops unduely, to the Disparagement and Dishonor of the Order and Succession: When the *Folio* turns matter of Commendation into Reproach, and calls their contending for due Administration of Justice and Laws, Clamors for the Breach of *Magna Charta*.

Invisos seu bene, seu male facta premunt.

By this he seems to argue them guilty of affecting Temporal Power, and intermeddling unduely in Secular Affairs.

C H A P. XXV.

BUT to discharge this Imputation, we will shortly remember, how modest they have always been in the exercise of their Ecclesiastical Office; and how faithful they have always been in former Ages, to that Temporal Trust which the Laws and Constitutions of this Government, hath annexed to the Spiritual Office of a Bishop.

The Bishops challenge nothing to belong to them of Divine Right, but the Exercise of their Ministry in the Cure of Souls.

They do not assume the Office of themselves, but are appointed thereto by the Sovereign Power; and therefore the Bench of Bishops are not answerable for every one of their Order. They rightfully acknowledge the Right of Investiture, and Collation of Bishopricks to be in the King, subject to Royal Exemptions and Priviledges from their ordinary Right. From which Exemptions Mr. *Selden* is too forward to conclude his Doctrine of *Eraastianism*, for that the Exercise of their Function may be restrained, as well in reference to Persons or Territories, by the Civil Authority.

Their Convocations are convened by the King's Writ; they debate nothing without his Leave.

Leave. Their Results become Canons, and receive Sanction by the Royal Authority, and do not pretend to infringe any Temporal or Civil Right or Law. And besides, their Convocations are always to be held, sitting Parliaments, and no longer, not at any other times: And whatever they debate or resolve, is under the Observation of Parliament. *Nequid detrimenti capiat Respublica.*

The Bishops make no Laws about Religion apart by themselves, neither have they any Negative against any that are propounded, and therefore are not answerable for any that are made or not made. They have not the definition of Heresie, but the Law hath declared it since the Reformation. And the Writ *De Heretico comburendo* is since abrogated by the Christian Temper of a Parliament, principally consisting of such Members, that were conformable to the Institutions of the Church of *England*; that is, the legal Establishments of this our Christian Commonwealth.

The Church of *England* is no more her own present Establishments, than the present thoughts of any man is the man himself; as the thoughts of a man are more refined and unreprouable as the man grows wiser, so do the Laws and Constitutions, the Orders and Rules of a Church or Christian Republick, alter, amend, and improve, as the Wisdom and Virtue, Religion and Devotion of the Government, and the principal parts

thereof in Church or State increaseth or advanceth.

Our Bishops have had, and that with the greatest reason, greater apprehensions of Schism and Separation, than of Errors in Opinion which occasioned it, as of worse importance to the Christian Faith than the Errors themselves. Besides, that a man cannot help being mistaken in many things; but it is in every mans power to be modest and peaceable, and wise to sobriety, and *hold the unity of the faith in the bond of peace and charity*, and not to revile and deprave that which hath the publick approbation, though he cannot thereto fully assent. It is great iniquity and unrighteousness, to pretend to Liberty of Conscience as their right, and in the mean time not to tolerate the publick appointments, and what is authoritatively allowed and approved.

If Controvertible Opinions are allowed a Warrant for making a Sect and separate Communion, and Churches are denominated and distinguished by them; and consequently such Opinions are advanced unduly unto the same necessity of belief as Articles of Faith: what will become of the Christian Verity? where will it be recognized and purely professed? how distinguished? how understood? how ascertained amidst the number of Opinions contended for, by the several dogmatizing Sectaries, with more zeale than the undoubted and uncontrovertible Articles of Faith?

Nay,

Nay, I will adventure to say further on their behalf, that Schismatical Separations would not offend them, (so little do they affect to be Magisterial) but for that if this Disease should grow Epidemical, there would be no such thing as a Christian Church, and the Christian Religion would perish from the earth without a miracle.

It is onely designed by our Church, that those whose Subscriptions are required, should thereby onely signify their allowance of the Liturgy and Articles, as fit to be used and allowable. What Plea then can our Separatists have for a Toleration for themselves; who by their Separation seem unwilling to tolerate the publick Establishment, either from our Governours Civil or Ecclesiastical, or from one another in their divided ways.

To reform or change to these mens pleasures is impossible, for that they cannot (they positively differing from each other) be all pleased in any one possible Establishment. Besides that, untill we cease to be Schismatics, and to be of separate and divided Communion upon the score of any dislike, or but probable exception to what is publicly received or allowed, the altering any thing for our satisfaction, will be but applying the Cure to the Symptoms, a cutting off one head of the *Hydra*. By this way to effect an union is as impossible as it would be to empty the Ocean, without stopping the current of the Rivers.

The Bishops are (as all men, by how much they are better learned, are) of the greatest Moderation in Opinions, and can tell how due-ly to rate and value them (according to the Prejudice or Advantage they do to the Ends of our Religion) those several Opinions, that have been contended with furious and rending Zeal, in the several Ages of the Church, to the Scandal of that peaceable Institution.

They can have a better Opinion of that man who hath unhappily entertained the less probable side of the Questions controverted, if he opines with Modesty, than they have of him, that holds the most probable part thereof, with a Sectary-Zeal, Separation from, Contempt and Disdain of those of a different persuasion. Their Moderation is known unto all men, of it their Opposers have had very sensible Experience, the several Dissenters cannot disown it; but must confess, that they have had severally kinder Usage from the Episcopal Men, than their several Parties have from one another.

By their Learning, Wisdom and Moderation, which is most eminently known and observed in many of them, and hath recommended them to the highest Esteem they must be allowed, their Enemies being Judges, to be the fittest Arbiters of the Controversies, and the most likely and probable Procurers of the Peace of Christendome.

All the Dissenting Parties have reason to look upon them, as their Common Sanctuary, and Defence against the Outrages of each other.

But in this they must be pardoned, if they, being under a Law or Rule of their Superiors (made, as they think, in a matter lawful) act accordingly, and do not disobey for their sake who think otherwise, though in the meantime they pity their Scruples.

Indeed the Terms of the Nonconforming Ministers have been made hard upon them; But that hath been from Reasons of State, which the late unhappy Wars occasioned, and they were ejected out of their Livings by Statute-Law. And on the other side it is true, that many men, not to fit for that Holy Function have enjoyed Church Benefices; but neither this can the Bishops help: For they cannot reject a Clerk presented to a Benefice, or eject him, but as the Law will, (so sacred is the Right of Patronage, and so fixed by the Law, are Ministers in their Livings) which is not Nice in the manners of Clerks, and the Bishops cannot be severer than the Laws.

So that if some men, not of the most unblamable conversations, have kept their Livings, and some of very unexceptionable Lives have been ejected: The unhappy Nonconformists are directed where to make their Complaint.

But as there is little Cause of complaint, on this part of the Episcopal Authority and function,

on, viz. Their Superintendency over the Par-
 sons of their Dioceses: So we shall observe how
 they have behaved themselves in the Exercise of
 the Power of the Keys: For what is done there-
 in by their Chancellors and Officials, to whom
 Custom hath given some Powers and Authori-
 rity, which cannot be check'd and controul'd
 by the Bishops themselves, they are not to ac-
 count, neither are they answerable for the Lay-
 Zeal that hath made the Condition of Excom-
 municants so very afflictive. For whatever some
 men please to think, the Laity have out-done
 the Ecclesiasticks in the Excesses of intemperate
 Zeal, as they are most apt, and prone by their
 Ignorance to Superstition. No man can pass
 under the Admonitions of the Church, and be
 suspended from the Holy Mysteries, until he
 hath made Satisfaction for his disorderly walk-
 ing, or Spiritual Pride, in breaking Order;
 but he is presently given up by the Laity to
 Satan. I mean, he suffers beyond the first In-
 tention of the Church in her Discipline. Seve-
 rities enacted by the Law of the State, which
 if reversed by that Authority that established
 them, and a civil Process were enacted for the
 Ecclesiastical Courts, in Causes of a Temporal
 Nature, which are appointed by Law to their
 cognizance. I persuade my self, we should
 hear of no more Complaints against them in the
 Exercise of the Power of the Keys.

For

For we observe, that they exercise the Power of the Keys with deference to the Secular Magistrates. They never presume to excommunicate the Prince, least they should thereby lessen his Authority, and shock the Government: For that all Government is established by the Honor and Reverence of the Governor, according to that Saying of Aristotle, ἐκ τῆς καταφρονέως πολλάκις τῶν καταλυσέων, Dissolution of Government doth easily follow the Contempt of the Governor. As Kings are not subject to Penal Laws, nor to be coerced by Penalties: So true it is also, what *Balsamo* hath noted, *ad 12 Canonem Synod. Ancyranæ, Imperatoriâ un-ditione penitentiam tolli.*

Neither do they presume in Reverence to the King, to excommunicate his Counsellors, and Ministers of State and Justice: For so it was declared amongst other of the *Avite consuetudines* of this Realm, by the Assize of *Clarendon*, *Nullus qui de Rege teneat in Capite, nec aliquis dominicorum ministrorum ejus excommunicatur, nisi prius Dominus Rex conveniatur.* In which our Bishops are agreeable to the Ancients. *Hildebert Cenoman*, after Bishop of *Tours*, who lived about the eleventh Century, says he, *Apud Serenissimum Regem opus est exhortatione potius quam increpatione, Concilio quam præceptis, doctrinâ quam virgâ.* *Ivo*, Bishop of *Chartres*, in his Apology for communicating. — *Gervasius* saith thus, *Quos culpatorum Regia Potestas, aut in gratiam benignitatis*

benignitatis receperit, aut mensæ suæ participes fecerit, eos etiam Sacerdotum & populorum conventus suscipere in Ecclesiastica Communionē debet; ut quod principalis pietas recipit, nec à Sacerdotibus Dei alienum habeatur.

Thus while the Bishops are not guilty of mean and unfaithful flatteries, they do not participate of the pride of the Bishops of Rome, or the irreverence and sawciness of a Presbyterian Consistory against their Princes and Governours.

Neither do they call up any criminal cause originally to their examination, but pronounce the sentence of Excommunication on such one-ly as first are civilly convict of a crime; save that matters of Incontinency are by the Common Law submitted to their Censure, for that by the venerable gravity of the Judge, and by the more private examination of such offences, the modesty of the Nation is best preserved, which is a surer defensive against the riseness of such crimes, perhaps than the sharpest punishments.

If they do excommunicate any man without a just cause, or do not absolve the Excommunicate when he hath made his satisfactions, the Bishop is compellable by the Authority of the Kings Courts to assail the man, under the pain of having his Temporalities seized into the Kings hands, though he is not restored without the Episcopal Absolution. For it is fit they should finally judge in their own proper Province; and they

they must not, they cannot relax the Laws of Christ, nor administer the power of the Keys of binding and loosing, by any other measures, for any power on earth. But against this power of the Kings Courts they do not dispute or declare, but have recognized it by their submission, and they can submit to the penalties, without complaining of this civil constitution. Nay, in the general order they approve it, though in a particular case perhaps they do not, because they cannot obey.

Our Bishops do not encroach any Temporal Authority *in ordine ad spiritualia* ; that state pre-
 tence by which the Bishop of Rome hath arrived to his exorbitant power, and by which the Scotch Presbyters would have acquired the like over Kings and Governours. Their Authority always administers to and assists but never thwarts or contradicts the Temporal. They have accommodated their power of the Keys, to the vindication of our established Government against the attempts of Arbitrary Power, to which their Allegiance to the King, and the regard of the publick Peace, did oblige them. For such Attempts are mostly the ruin of those that make them, always bring the Government it self into the greatest danger, and sometimes prove the ruin both of the Government and the Nation.

This was required of them as an indispensable duty, they being a principal part of the Government;

vernment ; and the present Bishops Successours to all their Rights, have no reason to decline their example, if they have the like cause.

The Bishops anciently were sturdy opposers of King John, when he designed to put this Kingdom into vassallage to the Pope, and thereupon he writes to the Pope thus as followeth: *In conspectu paternitatis vestræ humiliamus ad gratias multiplices, prout melius scimus & possumus, exhibendas, pro cura & sollicitudine, quam ad defensionem nostram & Regni nostri Angliæ, paterna vestra benevolentia indesinenter apponit, licet duritia Prelatorum Angliæ & inobedientia impediant vestræ proversionis effectum.* Pat. 17 Joannis R.M. 15. as I find it related by Mr. Petit, in his book entitled, *The ancient Right of the Commons of England asserted.*

About the 24 H. 3. Edmund then Archbishop of Canterbury, at a Synod held at Westminster, the King being present, *Candelis acceptis, & projectis, ac extinctis, Chartam Libertatum violantes, vel sivistre interpretantes, excommunicantur.* Mat. Paris, p. 151. About 13 years after, viz. in 37 H. 3. Boniface then Archbishop of Canterbury, the sentence of Excommunication is again repeated against those, *Qui Ecclesiasticas Libertates vel antiquas Regni Consuetudines in Chartis communium Libertatum & de Foresta concessas quasunque, arte vel ingenio violaverunt.* Fleta l. 2. c. 42. Dors. Claus. 37 H. 3. membr. 9. Additament. ad Mat. Paris, p. 117. Which Sentence of Excommunication

munication was ratified and confirmed in a Parliament held that year as followeth: *Noverint universi quod Dominus Rex Anglie, illustris Comes Norfolk & Marefchallus Anglie, H. Comes Hereford & Essex, J. Comes de Warewico, Petrus à Sabaudia, ceterique magnates Anglie, concesserunt in sententiam Excommunicationis generaliter latam apud Westm. decimo tertio die Maii, Anno Regni Regis prædicti 37, in hac forma, viz. Quod vinculo præfate sententiæ ligentur omnes venientes contra Libertates contentas in Chartis communium Libertatum Anglie, & de Foresta, & omnes qui Libertates Ecclesie Anglie, temporibus Domini Regis & prædecessorum suorum Regni Anglie obtentas & usitatas, scienter & malitiosè violaverint, aut infringere præsumpserint.* And the Record concludes, *In huius rei memoriam, & in posterum veritatis testimonium, tam Dominus Rex quàm prædicti Comites, ad instantiam aliorum & populi præsentium,* (which at that time was the stile of a Parliament, and the manner of passing such Acts) *scripto sigilla sua apposuerunt. Rot. Pat. 37 H. 3. M. 12. dorso.*

And whereas it was provided by the *Confirmat. Chart. c. 4. 25 E. 1.* and by the *Statute De Tallagio non concedendo, c. 4. 34 E. 1.* That Excommunication should twice a year be denounced against the Infringers of *Magna Charta*. At a Synod held for the Province of *Canterbury* in that Kings time, *John Peckham* Archbishop of *Canterbury* enjoined the like Denunciations near four

four times every year. *Constit. Provinc. tit. De Sententia Excom.* And in the Province of York it obtained three times in a year. *Mannale juxta usum Ecclesiæ Eboracensis.*

By which the exemplary zele of the Bishops in those times against Oppression, and the violation of the common Rights, and the attempts of absolute and unlimited power appears; for that they prevented the Temporal Baronage, and outdid the Parliament it self in defending and guarding the Government of Laws. By the way we cannot but take notice of Mr. *Selden* his mistake in his book *De Synedrîis*, which he fell into by inserving to his beloved *Eraſtian Hypothesis*, viz. That that Excommunication before mentioned in 37 H.3. was enacted by Parliament, whereas it was onely confirmed, but pronounced by the Bishops, though with the seeming good liking of that King: so that the Power of the Keys was not usurp'd, but the exercise thereof approved by Parliament; according to what hath been usual, as *Grotius* observes, *Usum Clavium Divino Juri congruum, & pœnarum injunctionem Canonibus & Legibus consentaneum, summæ potestates solent approbare; atq; hoc est Imperiale Anathema, Quod non una Justiniani lege comprehensum est.* Which together with what hath been said by us here, will serve for an Answer to what Mr. *Selden* hath aggested in his book *De Synedrîis*, for wresting the Keys out of the hands of the Bishops.

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They pretend to a *Jus Divinum* only, for that which merely concerns their Spiritual Office ; and I cannot for my part suspect them of holding any Opinion of a *Jus divinum* in Civil Offices, which are of a Humane Original, because I can imagine no reason for such an Opinion, though I know it is by some imputed to them.

By a *Thomas of Becket*, a *Sibthorp*, and *Manwaring*, and a few less-considering Clergy-men in an Age, we are not to conclude the Judgment of the Body of our Learned Clergy. They assuredly know, as all men in their Wits do believe, that the Government is *de jure*, such as it is, and can be no other, nor rightfully admit any Alteration. That God never made any Commonwealth but one, by his directive Will, and that only for one Nation (for in these things, he hath left men ordinarily in the Hands of their own Councils, and to their own Prudence) in which he had no regard to the absolute rightful Sovereignty of *Adam's* right Heir, the wildest certainly of all the Paradoxes that this giddy phantastick Age hath produced. The *Kentish* Knight should have kept his Dream to himself, until he had found him out, and then have brought him and his Book called *Patriarcha*, together to the King: Then I doubt not, but his Majesty would have provided him his due Reward. But his Book, and the Publishers thereof, deserve his Majesty's

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utmost Displeasute: For we are in fear that the Government is about to be changed, when Books are licensed to prove any thing Lawful in that kind. And besides, it makes a Charge upon our Divines, that they have a good liking to the Design; for that they who best understand by their Profession the *jura divina*, have not answered it. But to speak the Truth, the Book is not to be answered: For it is but a fine Essay, how near Non-sence may be made to look like Sence; and it is truly worth no man's Undertaking.

But whatsoever sinister thoughts some ill affected Men to the Bishops may conceive of them, we expect, and with reason too, that they will, with equal Courage to that recorded of their Predecessors, stand up for the Preservation of the Government, in its true and rightful Constitution. And the rather, for that the true Religion, their Principal Care, and their Temporal Rights and Dignities, will inevitably perish in the Change: Nay, perhaps in consequence of the very Attempt of a Change, except they strenuously for their parts oppose it. However, their Order, will certainly, by their Silence and Indifferency, be rendred despicable. They will lose all opinion with the People, of their Sincerity, perform their Functions with no advantage, and lose that share in the Honors and Affections of the People, that will establish them, & bespeak them useful and necessary to the Church and State,

state in their several Capacities, in all after times. That they answer their Trust, and perform that Duty which they owe to the Publick in their several Offices, is that we may justly expect: And this they will certainly do, though they should be censured, as they were in K. *John's* days; or in the Language of the *Folio* Author, charged to be clamorous and over-busie Meddlers in Matters of State and Government. But to return;

Is it not a course Artifice, in the *Octavo*, pag. 96. that he will so willfully mistake the Question'd of the Bishops, being one of the three States, and representing the Matter; as if the Bishops should have a Negative by themselves, to stop the passing of any Bill, if they are admitted to be a distinct State.

C H A P. XXVI.

WHen it is not disputed, or brought into Question, whether they are divided in their Voting from the Temporal Barons, most certainly they never were; nor was it ever disputed. Though an obstinate Opinion was maintained from the Time of *E. 2.* in the Case of the *Spencers*, until the Time of *E. 5.* in the Case of the Earl of *Salisbury*, that the Bishops Presence was necessary in Judgments, even in Capital

pital Causes, which must be allowed a clear Argument for their Right of Judgment in such Causes. For the Spiritual and Temporal Lords, though two States, make but one House upon the Reasons afore-mentioned, according to the general Understanding and Usage of former Ages. But upon this Supposition, he tells us of several Bills that gave furtherance to the Reformation, to which the Bishops did not assent, and would never have passed, if they had had a Negative upon them. But by his Favor, these Instances of his, are great Arguments of those Bishops their Sincerity: For they must needs be under great and violent Prejudices: Besides, every great man (as the Author of the Letter well knows) is apt to value himself, and cares not to be accounted a light man; and the higher in place, the more unwilling to be found in a Mistake; and they are not content, if Old Men,

Quæ juvenes dedicere senes perdenda fateri.

There is good Hopes therefore, that our Rightfully Reformed Bishops will be the last that will give up the Cause of Reformed Christianity, and will not be out-done by the Popish Bishops in Constancy, when they have a better Cause.

I must likewise take notice to do the Spiritual Lords Justice, of the Behavior of the Gentleman

tleman in *Folio* towards the Bishops. He takes notice, and that dutifully, of the Satyrical (so he calls it) Language of the Pamphleteers against the Court, and the greatest Scurrilities with which the House of Commons are aspersed; but has not heard, sure, of any against the Bishops, and the whole Ecclesiastical Order: For he makes not the least mention of any such: But because they shall not escape (besides that, in his Book he declaims *ἀπ' ἀμαξῆς*, against the Order, and seems so fond of this Office, that he forbids all other the use of the Cart) he tells the Story of *Hephestion* and *Craterus*, the one of which loved *Alexander*, and the other the King. By this Apologue, I doubt not, but he intended a Slander; and to signify thereby supprestly, a lewd Reproach, *viz.* that the Bishops are not true Servants of the King and Government, but of themselves; than which a falser thing, I hope, cannot be said, nor a more malicious thing imagined, if not true: For he may know, that they are better men in their true Character, than his Loyal Patriots, that are true to the King, and House of Commons: For they have, I doubt not, I am sure they ought to have a care of the whole Government in the Integrity of its Constitution.

The Bishops well know how much the People are concerned in the Greatness of the House of Lords, which establisheth the Throne, and makes, and supports the King Great; and by

their Power and Interest, make his Government equal; to which they contribute no small Share; for to them is entrusted, by the Authority of our Lord Christ, the Conduct of Religion, and that mighty and momentous Office, hath commended them, and advanced them to the State of Peerage; and will continue them in great Authority with the People, as long as the Nation continues in any degree Religious. The Temporal Baronage cannot want them in the Support of that mighty Province that belongs to that House. In them the People will find their Interest, as long as they can value Wisdom and Religion, that is, as long as they are Christian Men; and by them the Kingly Office will find it self served, as long as true Religion and Wisdom can minister to the Support of Government, and wise and good men under the greatest Trust, and in the highest Dignity in the Government, can be fit Councillors and Ministers of State.

The *Oflavo* hath also a hint to this purpose: for pag. 30. where he brings in the Case of *Thomas Arundel*, Arch-bishop of *Canterbury*, when all the Bishops made Sir *Thomas Piercy* their Procurator, he says, That uniting in one man, argued a great Unanimity in the Voting of the Prelates; which seems, saith he, hath ever been. The meaning of this is a sly Disparagement of the Bishops in their Voting, viz. that have one Common Tie and Dependency upon the Crown, that

that determines them to their Interest, and produces the Unanimity of Voting.

But are the Bishops more depending, because they once for all received their Temporalities from the King, than the Temporal Lords, who are commoly Officers of State, and otherwise depend upon their Prince's Favor? Is not the Bishops Advancement rather a Reward to their Eminent Services, performed in the matter of Religion, of the greatest Importance certainly to the State, and a Recognition of the excellent Character of those men that are preferred to that Office, than a Bribe upon their Actions, after they have that Favor irrevocable.

Do not we know that the Services of Churchmen are rewardable upon the Churches Stock, and that the King need not impair the Royal Treasure, to pay Thanks to Episcopal Men, whose Worth doth bespeak the Royal Favor to that Preferment and Advancement? Are not the Temporalities of the Church, the King's only to give, but not to retain? What evil Prejudice or Obligation can this be to any man, to serve the King unfaithfully, who hath chosen him perhaps, though there were others but as equally fit for that Office: For we ought to suppose no other disposition of those Dignities, than what is just and fit in our general Discourses, however things are administred in particular Cases.

Is not this an Office, together with its maintenance, of the Provision of the Law, and not of the King.

But to remove that Scandal of their Unanimity, in voting, which some have reproached with a scoffing Term of a dead Weight, it may be considered, that Men of the best Judgments and Honesty mostly agree: That Variety of Judgments proceeds oftner from Passion and Interest, than from Difficulty of the matter debated. It mostly grows, either from want of Integrity, or want of Judgment. Agreement in Votes, is an Argument therefore of true Judgment, and unbiassed Integrity: As it is also farther, of a good Correspondence amongst themselves, of previous Debates, and more mature Deliberation. Besides, that it is no unusual thing in difficult and lubricous Affairs, for many to compromise the matters to a few, or to the Majority of their own Numbers, and abide the Result of the *major* part.

But because this matter of Exception to the Integrity of my Lords the Bishops, in the great Affair now in Agitation, is *argumentum ad hominem*, and gives Prejudice to the true Right and Merits of the Cause; and is the most prevalent and hopeful Argument, if not the only one that our Adversaries can rely upon: For whatever the *Causa justifica*, or Pretence be, for the espousing of any Opinion, or part of any Controversie, if the *Causa suavioria*, the Inducement,

ducement, and true moving cause thereto be strong and perswasive, the slightest Reasons will be a pretence for Confidence, and the smallest Color of Right, shall prevail finally, and in the last Issue, especially where the Parties concerned must judge; or by their Power, can make their Will, and determinate Resolves, to obtain to the biggest purposes. I will therefore farther add, that we well know what a high Esteem their true Character doth deserve.

That they are intended the Light of the World, the Salt of the Earth : If the Salt hath lost its Savor, wherewith shall it be Seasoned? And if our Light be darkened, how great is our Darkness. The Bishops know, that the World will not be kept in Order, by meer Designations of Trust, but by Execution of their Trusts, not by abstract of Characters, unless they are put on, and effectively worn. The World will not be put off, that there is no Provision made in the Government for reasonable Expectancies of all that can make a People happy, if we are disappointed in our just Expectations. They know for what high Ends they are advanced to their Secular Dignities, what was it that hath thus advanced them. Was it not the reasonable Expectation that Christian Princes and Governors conceived of their excellent Virtues, that they would out-doe all mankind in firm Constancy, a vast and extensive Charity, unrelenting Fortitude, inflexible Justice, unmoveable Faith

Faith and Loyalty, and unbyassed Sincerity ? What Temptations can their Lordships have, that they should not, or we Reasons to believe, that they will not put forth all those Christian Vertues in Heroical Degrees, which the World will not give them leave to exert only in common measures ? They will find it necessary sure to be now Confessors for the Support and Happiness of a poor distracted Nation, a vast and great People. They will, no doubt, subdue the Greatest Potentate to Justice (if there be any such) who hath unhing'd the Government, and sap'd the very Foundations of our Constitution, and will never consent to the Pardon of such Sins, that are not to be pardoned in this World, nor in the World to come.

Can they suffer the true Christian Religion, of which they are the chief Ministers and Curators, to perish by their timidity and cowardise ? Can they suffer a great People committed to their charge, to be destroyed into an Anarchy, and desert that Prince whose Beneficiaries they are, and not interpose for the saving of him and his Government, by faithful and wise Counsel ?

To suppose such things as are morally impossible is unreasonable, and to fear where no fear is. For they, if they were wholly secular, and were guided by nothing but a secular Interest, can consider that the world is impatient of disappoint-

appointments. That they hate nothing more than deceits and abuse of trusts, and that he that falls short, and goes less than a just expectation, falls into the lowest and vilest contempt and deepest scorn.

But this is not a time sure to lessen the Prelates, to take from the Bishops any just advantage or honour, when that the contempt in this later age thrown upon them, and the whole Order Ecclesiastical, and the mischiefs that have naturally ensued thereupon, have brought our Nation, Religion, and Government, to a most miserable state, a most desperate plunge, out of which I pray God we may be able to emerge.

The Contempt of the Bishops and Clergy made the People despise the publick Establishment, chuse Teachers not much wiser than themselves: And they have thereupon multiplied vain Opinions and Divisions, and true Christianity, is scarce had in any Consideration. Atheism and Profaneness upon this Stock, is come to an enormous Growth, which thrives the faster, by the vain Opinions and Immoralities of the mistaken Religionists, by which the Atheists take the Measures of true Christianity; and in Consequence of this, Popery is arrived to a vast Increase in Power and Interest, and threatens us, and the little Remains of true Reformed Christianity with an utter Overthrow. The true Christian Religion is not generally understood, and hath lost almost all Credit and Belief in a Christian Nation. So

So that it seems to me, upon the Consideration of our present State, almost necessary, that the Truth of the Christian Faith should be again demonstrated in Flames to this Infidel, flagitious and degenerate Age, that the Stains of the Christian Religion must be washed off by the Blood of the Sincere Professors. That the true Faith should be better understood, as it will be by dying Thoughts, and vain Opinions, be destroyed, and burn up like Hay and Stubble, in the Fire of Persecution: For then we shall understand what it is that is worth dying for, and that which is not worth dying for, is not worth disputing and dividing for in our Christian Communions, with breach of Charity. Then our Guides, the Holy Order of Bishops, and other Faithful Pastors of the Church, may shew their Sincerity. and appear of what Value they are of in the Conduct of Souls, by their wise Apologies and Noble Confessions and Martyrdoms for the true Christian Faith, and recover a due place in the Peoples Reverence and Esteem for their Successors. And if God, in all his wise Providence and Care, which will never be wanting to his true Religion, shall think it necessary by this means to recover and restore it, let this Fiery Tryal come, let it come.

And then, I doubt not, but we shall have our ἡγούμενοι πρεσβύτεροι & ἐπισκοποί, used in Scripture, for the Prelates of the Church, to signify

signifie the high Esteem they had of them, and are the same with Leaders, Captains and Commanders, many *Cranmers*, *Ridleys*, and *Lati-mers*; leading up their Troops of Confessors, and a Noble Army of Martyrs, who will again seal the Christian Religion with their Blood; and a more Glorious Church shall recover out of the Ashes of this.

But God grant that we may dispose our selves by more easie Methods, to recover out of our sickly Estate, when we know our Disease, and may be cured by more gentle Remedies. But I am sure, that nothing can save our Nation and Religion, but an excellent Clergy, and a high Esteem of them amongst the Laity. And for this Reason, I have earnestly concerned my self for the Bishops Right, of judging in Capital Causes in Parliament, that they may want no Capacity of making a gasping Nation live; and thereby of recovering themselves and their Order into a high Veneration, that they may more effectually administer to the Advancement of God's True Religion and Vertue, and making this Kingdom happy for Succeeding Generations,

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SIR,

I Now render you my hearty thanks for your free advise, you gave me concerning the publishing of the Argument, for the Bishops Right of Judging in Capital Causes in Parliament, and for asserting their civil Honors and Rights in the Government. Because it hath given me an occasion, both of vindicating the most of the Inferiour Clergy, from those Imputations which you have remembred to me, and are commonly discoursed to their disadvantage, whereby they have lost their Esteem with the People, and also of rectifying the mistakes of some; for their number is not great, who have given too much cause therein of publick complaints.

You diswade me from giving any assistance to the Rights of the present Bishops; for, that the Clergy out of whom the Bishops must be made, have entertained Principles that are destructive to the Government. They affirm (you say) *That it is in the power of a Prince, by Divine Right, to govern as he pleaseth, that the power of the Laws is solely in him; that he may if he please, use the consent of Parliaments to assist the reason of*

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his Laws, when he shall give any, but it is great condescension in Kings to give a reason for what they do, and a diminution to their most unaccountable Prerogative. You say, That they are for a Popish Successor and no Parliament, and do as much as in them lies, give up our antient Government and the Protestant Religion, the true Christian Faith to the absolute will of a Popish Successor, giving him a Divine Right to extirpate God's true Religion established amongst us by Law, and to evacuate our Government by his absolute pleasure.

Our Government by a King and Estates of Parliament, is as antient as any thing can be remembered of the Nation. The attempt of altering it in all ages accounted treason, and the punishment thereof reserved to the Parliament by 25. Ed. 3. The conservancy of the Government being not safely to be lodg'd any where, but with the government it self. Offences of this kind not pardonable by the King, because it is not in his power to change it. This is our Government, and thus it is established, and for ages and immemorial time hath thus continued; a long Succession of Kings have recognized it to be such; And just now when we are under the dread of a Popish Successor, some of our Clergy are illuminated into a mystery, that hath been concealed from the beginning of Governments to this day, from the wisdom of all Princes and Ministers of State. *That any authority in the Government not derived from the King,*
and

and that is not to yield to his absolute Will, was rebellious and against the Divine Right and Authority of Kings in the Establishment, against which no usage or prescription to the contrary, or in abatement of it, is to be allowed. That all Rights are ambulatory, and depend for their continuance upon his pleasure. So that though the Reformation was made here by the Government established by Law, and hath acquired civil Rights not to be altered, but by the King and the three Estates. These men yet speak (say you) as if they envied the Rights of their own Religion, and had a mind to reduce the Church back again into a state and condition of being persecuted, and designed she should be stript of her Legal Immunities and Defensatives, and brought back to the deplorable helpless condition of Prayers and Tears, do utterly abandon and neglect all the Provisions that God's providence hath made for her protection. Nay, by this their new Hypothesis, they put it by Divine Right into the power of a Popish Successor; when he pleaseth at once by a single indisputable and irresistible Edict, to destroy our Religion and Government. And these opinions, you say, they are the more inclined to entertain; For, That they believe no Plot, but a Presbyterian Plot; for, of them they believe all ill, and call whom they please by that hated name, and boldly avow that Popery is more eligible than Presbytery; for by that they shall have greater revenues, and more Authority and Rule over the Lay-men:

This is a heavy charge if true, but it is imputable (I am sure) but to a few, and not so generally, as some malevolent men of the Popish Faction are industriously busie to have it. For if it were, I confess, it might choque the constancy, Resolution and Zeal of the most addicted, to the service of the Church men, and make them at least very indifferent in their concerns. For these mistakes are so gross and inexcusable, that they ought to be permitted to suffer the smart of their own follies, and to be corrected by the evils they are drawing down upon themselves, with their own hands. They deserve to suffer as betrayers of their own Country, and to be prosecuted with greater shame and ignominy, by all of the Reformed Religion, than the *Traditores* were by the antient Christians. These their deserting of the true Christian Faith, being much less excusable then that of theirs, and of greater mischief, as of deeper malignity.

How many of the Clergy-men are thus misled we know not, but they seem many more than they are, because they are most in view, and come often under observation, frequent publick houses, and talk loud, because they want the Complement of their preferments.

Put certainly Sir, what you say to be the declared opinions of some Clergy-men, is the business now of the Papists to propagate.

Hoc Ithacus velit & magno mercantur Atrida.

These

These are agreeable to, and indeed make up the most modern Project and Schem of the Popish Plot.

Since the discovery of their first design of killing the King, and massacring of the Protestants. They have taken such courage by observing how little power we have to prevent their design, that they have us in scorn, and in the vilest contempt.

They now think that we are not worth destroying, but by our own hands, that we are not worthy of their trouble, or the charge of Executioners of their providing. How entertaining is it to his Holiness, to find the Church of *England*, the impregnable Bulwark of the Reformed Religion, easily fall into his hands, by the unpresidential folly of some of her Sons, without the trouble of attacking her, either by force or Argument, which hath hitherto wanted success, and the attempts always attended with dishonor, and mischief to his See. How pleasant will it be to him to see us perish, and our destruction to be from our selves. With this he will answer all the irrefragable Apologies of the Church of *England*, for her departure from the Communion of the Romish Church. Then he will say with triumph, our Church destroyed her self, and perished by a *Divine Fate*, for her unwarrantable and Sacrilegious Schism; for so he will call our *follies*, and impute them to Divine infatuations. The

manner of our destruction will be a better Argument, and of more force against the Doctrine of the Reformation, than all the Arguments of all the Doctors of that Church to this day.

For this purpose, since the Discovery of the Popish Plot, it is that Sir Robert Filmer's Books were Re-printed together, and recommended by the Title Page and the publick Gazet to our reading. Since the Discovery of the Plot, we have had variety of Books Printed to the same purpose; *viz. To prove that all Kings as Kings are absolute by Divine Right.* Since the Discovery of the Popish Plot, we have had men employed to search all our antient Records and Histories, to find out something more antient than our Parliaments as now constituted, that it may serve as a pretence to take them away. Since the Discovery of the Popish Plot, we have the memory of our late calamitous War revived, to raise a Pannick fear of another, and to make the King believe that the genius of the Nation is Rebellious, and that the Protestant Religion it self is to be apprehended by Kings.

It is difficult to tell how that late unhappy War began, or how it came to issue so Tragically in the Death of the Late King, though we know how it ended, *viz. The Nation recovered within twelve years after the most deplored Death of that excellent King into a renowned*

nowned Loyalty, and in spight of a great Armed Power, never before foil'd, ever victorious, then kept on foot for the interest of a very few men, restored our present King (may his Reign be long and happy) to the Government of his Kingdoms, without the least assistance of any of the Cavalier party, and oblig'd a wary General in the head of a factious and republican army to Loyalty.

Nay within that time also, the Nation had recovered out of their partial Lapse into Fanaticisme, bread up great numbers of excellent Schollars, who masterd the prejudices of those times, were revered by the chief of the Presbyterian party, and are the beauty and strength of the Church of *England* at this time.

The Presbyterians themselves were grown reconcileable to the Church of *England*, and had learnt by woful experience the mischievousness of Schisme, upon no better pretences than what then might have been satisfied and accommodated.

When the King and Church were restored, Fanaticisme had expired, if some old peevish and stiff Church-men had not studied obstacles against a universal accommodation, and some crafty Statesmen had not projected that the continuance of the Schisme would be of great service some time or other, to destroy the Church of *England*, and change our antient Government, which is now apparently the P.

pish Plot, and if ever it be effected, it will be
 with this trick of affrighting the Church of
England with the apprehension of Fanaticisme,
 and making them suspicious of Parliaments.
 As many of them as are drawn into an opinion
 of the disloyalty of our late Parliaments, the
 illusions of the Popish Plot hath passed upon
 them, and they are under the power of its fasci-
 nations. But both the Loyalty of the late Parlia-
 ments, and also how much it imports the Plot-
 ters to have it believed that they design upon
 the present Government, will at once be clear-
 ly understood; if it be considered what hath
 been done for the forging of a Protestant Plot,
 (which was intended at the first opening to ex-
 tend to the House of Commons) Things so
 wicked as would make a virtuous man ashamed
 of the age he lives in. But after all endeavors
 to find witnesses for their purpose, powerful
 encouragements and great rewards, they have
 drawn none into their assistance, but who are
 publickly known for Rogues, or who wanted
 Bread, or had no Reputation to loose. If the
 falshood of this forged Plot had not been utter-
 ly improbable, they might have procured bet-
 ter seeming, and more credible witnesses. They
 might sure have found in this age men bad e-
 nough, not already infamous to have testified a
 probable Lye. But so necessary it is to the Po-
 pish design, that a Protestant Plot be believed
 that they are not discouraged at the manifest
 de-

detection of their conspiracies, perjuries and subornations; but will still go on as if they had a power to work miracles of villany for their Religion, which is no better. Our modern Politicians have been most observant agreeably to their virtuous make; how frauds, perjuries and violence have prospered, and succeeded in some particular cases, and have brought about some designs, imagine such means thoroughly multiplied, to be able to conquer all things which they design. But these Arts which have had success by the permission of God, when one Villain hath been to destroy another, will not pass upon the Protestant Religion. Let them seriously in time despair, and give over such enterprises, *For there is no Enchantment against Jacob, nor Divination against Israel, the Lot of Gods inheritance, and his peculiar Care.* If Mordecai be of the Seed of the Jews, Haman shall fall before him, It is matter of comfort to us, and despair to the Plotters, that not one of their Plots yet, but hath proved Abortive, or they have been defeated by their very success.

Besides, pray let it be observed how this Design of lessening our just confidence in Parliaments, is otherwise carried on and promoted. It is now become the principal business of the Mercenary Writers for the Plot, to pick up and cull out all the enormities and irregularities of those times, the *Vitia temporum*, and stories of wild pranks of some beastly Fanatical people,

people, that exceeded the common degeneracy of those ill times, into which the Nation by undiscernable degrees so foully lapsed, to make thereof an ugly Vizard, and this they clap unduly upon four fifths of the Nation, upon all that love and adhere to our Government and Religion, to render them suspected of destroying again the English Monarchy and the Protestant Religion, even for those very proceedings that they make for preserving both. For the service of Popery requires, that whosoever opposes it must be branded with Treason and Fanaticisme; that such delicate persons as are fond of the name of Loyalty, though they understand not in what it consists; that hate the name of Fanatick, since it is become as common a name of reproach, as the *Son of a whore*; though they understand not so well what it means, will be sure so to behave themselves, as to be reckoned for Loyal and not Fanatical, by taking the measures of the one and the other, according to the new notion of the Plot Writers, may become theirs with all their idle prattle. But let them make their best of this foolish sort of men, if that was all they could effect by this project.

But they design further upon the Nation, *viz.* to match the fears of Popery, with a fear as great of the like Evils to those of Forty one, as if these Plotters had power by their interest to raise a new War, when we have power and authority in our Government, if it were exerted,

to

to destroy them by Justice. But these State Mountebanks think it convenient, because the Nation was cast into a Frenzy in Forty one; therefore now when in perfect health, we are to be cast into a Lethargy to prevent our relapse, and in the mean time they intend we should perish insensibly and quietly, that way they design to destroy us.

It is since the Discovery of the Popish Plot, that Popish Mercenaries have been hired to write virulent Libels against the Church, and bitter invectives against Fanaticks. Out of the same Mint came a villanous Libel, called *Omnia Comesta a Belo* against the Church, apt to render the Church-men suspicious of another detestable Sacrilege designed. And that loathsome Print entitled the *Committee or Popery in Masquerade*. Many parts whereof hath no other reason of belief, but that they have been the Subject of some drunken Rhimes in former times, but it is in the whole an insufferable Libel against the Nation by its application to this age.

These Mercenaries are the Authors as well of treasonable Libels against the King which they forme, so as they may seem to come from the Fanatick party, to render the King jealous of them, as they are of the Libels against the Parliament and their proceedings, to breed misunderstandings between the King, Parliament and People.

It

It is since the Popish Plot was discovered, that Fanaticisme is represented more intolerable than Popcry. That the Popish Plot evident to the satisfaction of the King and several Parliaments, and of our greatest Judicatures, is yet told us not to be so certain, as that the Fanaticks are Traitors in their hearts, though they own no principles as the Papists do that warrant Treasonable practices. And these Mercenaries as frankly, as if they had for the dividing of the Nation a Warrant so to do, call all Fanaticks that oppose Popery, desire Parliaments, and expect they should use that power that is lodged in them, to keep out Popery, and preserve our Government, and to bring to punishment those wicked men, that have notoriously designed to destroy it. The belief of the Popish Plot in the mean time, is by scoffs and paltry Rhimes, permitted publickly to be sung in the Streets, put out of Countenance, and those that believe it exposed as a sort of credulous Fools, or designing Knaves.

Such a vile esteem the Papists now have of us, that they prosecute us with their scorn, and use us as if we were below their hate. They think our divisions which they have made have already destroyed us, and they now hire a sort of *Scaramouchy Zany's*, *Merry Andrews* and *Jack-Puddings* to insult over us, and make sport at our miseries.

These

These pleasant Knaves cry with one side of the Face, and laugh with the other, but in the mean time they cry in jest, but laugh in good earnest. He that had the art of imitating a grave Spaniard with one side of his body, and a brisk *French* man on the other side rendred both Nations ridiculous.

These vain fellows deprave every thing they meddle with, and what ever they say of Church or State, Religion or Policy, is raillery and abuse and Pamphletting scurrility.

Lord under what seeming fatality do we labor, that it can be thought to the Service of the Church or State, to employ such Knaves.

We are used like *Samson* bound, and our Eyes put out, and made sport for the *Philistims*. By these pyd Pipers, our young men are seduced, and danc'd down a precipice, though these merry Knaves have not skill enough to commend them for Rat-catchers; if our City should be infested with that vermin, as they say the Town of *Hammel* once was. But the Daemon that appeared there a pyd Piper who destroy'd their Children as well as their Rats, was not more mischievous to that Town, than these motley Knaves are to the Kingdom and Nation.

It is an insufferable indignity, that the tragical State of our Nation should become almost daily the matter of a Rascally Farse; the very anguish and groans of the Nation turned

ed into Laughter and Mockery, such a barbarity was never used to a Nation.

It is an excess of Petulancy, to make abstract misery in the very form of it, mimically represented matter of Mirth and Laughter.

These men were born out of time, and were fit for no age but that of *Nero*, of whose comfort they should have been, when he played the *Destruction of Troy*, to the Burning of *Rome*. But I do not doubt but His Majesties Justice will e're long overtake these incendiaries, that are so pleasant at the embroilment of his Kingdom, when it shall be duly represented to him what beautefean's they are, and unmerciful deriders of the Calamities of his People, which they occasion or promote, tho they think they may pass any thing of this kind upon the Nation made vain, with trifling false wit and Buffoonery.

It is now Twenty years since our Nation was infected with this sort of wit, and now we are to dye of the disease, and we have a Fiddle provided for us that have been bit with this venomous *Tarantula*, to dance and frisk us to our destruction not to our cure, and yet we pay the Fidler. This thing wit, the greatest debauchment of this age hath depraved not only the manners, but the Judgment and understanding of the Nation too. It hath been accounted the best accomplishment of men in place, the best part of the Learning of this last Age: It is not the reason of the *Leviathan*, so much as the vanity of wit, that

that hath propagated atheism and corrupted our manners. This hath made our Judgments insincere and trifling, and our determinate resolutions in matters of the greatest moment slight and Phantastical introduc't idleness and neglect of solid Learning, which requires labor and application to obtain, while this extemporary faculty has been accounted an admired accomplishment.

There is a sort of wit very commendable which *Tully* calls *celeritas in verbis*, and the Greek Epigram, *ὑβρινὸς μίγνυον ἑσπερινήν*, which is a pleasant entertainment in conversation, and a commendable refreshment, where our minds are tired with anxious and graver business, and the troubles and cares of human life, but this ought to observe its times, its proper subjects, it ought to be confined to Table talk, an evening computation, and the hours of mirth, and the relaxation of our mind : It may be used decently in a Comical Farce ; but it is not allowable in *Satyr*, most undecent is the use of it in Tragedy. But yet it hath insolently interposed in our Politicks, governed publick Councils, sometimes determined debates in Parliament, hath made our Pulpits contemptible, our Theology trifling : It is admitted to resolve the greatest Questions and determine Cases of Conscience, to establish and refix Church Government, hath usurped, an authority to alter and pull down Governments, and

to render them tottering, when they are as firmly establishd and fixt as a Rock.

That Wit that is abhorred by all men that are wise and honest, is that versatile shifting, squinting, distorting of the understanding, that it views nothing truly and represents things not according to their true nature, but under false Fantastical Schemes, which they affix to them to abuse the judgments of others, a man can never arrive to any perfection in this faculty, untill he is become false, and lost his truth and modesty, and none but weak men are entertained with it, and such who do not desire to understand truth, but to serve a turn and love to be deceived, and deceive themselves for advantage, it is in perfection in old Knaves, and admired by young Coxcombs: It is the Hypocrisie of the Tongue, a plausible mode of lying and flandering, and at best but a pleasant Knavery.

It will render ridiculous or culpable by false representations the most noble and heroical actions, and put false colors upon most detestable Villanies. It can discredit a man by honoring him, and make a thing incredible by the very mode of believing it, making a man ridiculous, it concludes him at the same time unworthy, and to confute the most avowed Truths, there needs no more than to raise a fit of laughter upon it, which has the same effect with the men of Wit, and their vain admirers as reducing a
false

false proposition to an absurdity: Thus the reason of this age is governed by our risibility. The Popish Writers have thus tickled us with their Wit, that we are ready to dye and perish laughing, and we know not, nor care to Judge what does truly concern our preservation. And by improving the vanity of some youngsters, they have drawn them to question the Truth of the Popish Plot, and some can believe every hour of the day when they meet with a merry Popish Pamphlet that there is a Protestant Plot on foot; though they believe it, I am sure not much longer than they are reading it.

I will not grudge my pains in furnishing a short Demonstration of the Popish Plot, since it is of such importance to the saving of these men and the whole Nation, which possibly may fix their minds (notwithstanding so vain they be) into a belief of it, which I have made short that it may be the better remembered, which I do in kindness to them, since it was lately (and may be so again shortly) a criminal matter to bring the truth of it into question, and they are by all honest men reckoned as Plotters themselves who doubt it.

The Plot has been declared by the Kings Proclamation, and four Parliaments, one of them consisting of Pensioners and Dependents on the Court, which for eighteen years together, were giving Demonstrations of their Loyalty to their Prince, almost forgetting the publick

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Weale:

Weal: A solemn National Fast has been Indicted by the Civil and Ecclesiastical Authority of the Kingdom, for averting the mischiefs thereby designed, and solemnly Celebrated by the whole Nation, in which certainly they did not mock God and deride his providence.

Many unparalleld Villanies have been committed for the stifling, concealing and suppressing the discovery of it, which (however wicked the Papistical sort of base, false and degenerate Christians are) we cannot without breach of Charity towards them, think they would commit cheaply, and without cause, and to no purpose. They have murdered a Minister of Justice, because he had the knowledge of it, and left nothing undone that they thought necessary to Assassinate another for strenuously opposing it. They have attempted upon the Lives of our Witnesses, by perjuries and forgeries, they have endeavored to charge them with the most infamous crimes, endeavored to destroy them in their Lives and Reputations too in a forme of Justice. They have attempted by fears and rewards upon the integrity of all our Witnesses, to draw them to retract their Testimony against the Plot, for which some of their Agents have been judicially censured; One Gentleman to the Pillory, Fined a 1000 l. and Condemned to a years imprisonment, so evident and notorious was his offence, and by the Court thought so heinous: That it provoked

voked the passion of the Court, and they seemed to exceed the ordinary Rules of Justice, for that they judged the Case to be of an exorbitant and transcendent nature. The Plot of the *Meal Tub* is so sublimated a piece of wickedness, the last accomplishment of villany, it hath out-done all former, and will never be out-done in after ages. The Papists by the Discovery of the first Plot became less hopeful in a Massacre, and of effecting their purpose by force : They dare not now kill the King, for that the World would not now believe it to be done by Mr. *Clappole* and his accomplices, which must have born the blame from the Papists, and he and they long since Executed as Traitors, if that part of the Plot against the Kings Life, had not been prevented by being detected.

I say the first design of the Plot being rendered less feasible by the discovery, they keep the King alive with care as well for their avoiding the rage of the Nation, as to lessen the credit of the Plot : But contrive to destroy as many as they thought fit to be Massacred in forme of a legal process, and to charge them with a design of raising Rebellion against the King : They had made a List of a great number, whom they intended to charge principal Nobles and worthy Gentlemen about the Town, had prepared witnesses to swear the charge against them, and would with more ease after the first Conviction and Execution, have sworn all that

they had a mind to destroy into the same guilt. And thus all the truly Religious, the noble, good and virtuous of our Nation, that had courage enough to own, assert and defend the true Christianity, and our Government must to the eternal dishonor of our Nation and Religion, have suffered the execrable death of Traitors. We have reason to think them humane, when they only designed a *Gun-powder Treason* or a Massacre, and our abhorrence of this usage dischargeth in us all reluctance to Martyrdom: Let them bring us to the Stake as Martyrs, then we shall bear our Testimony to the truth of the best Religion, and our Lives will not be cheaply lost; but by this means we must be forced to dishonor this Religion by our deaths, by a Massacre or a Gun-powder Plot, the villainess, cruelty and treachery of that Apostate Church, had been declared to all the World, and that false Religion, as well as the professors of it, had been rendered detestable, for which end a good man would scarce refuse to dye, but by this means they would have forced us to personate their own proper Crimes and Villanies, and dishonor our own peaceable and holy Religion: A man of Honor prefers his Honor to his Life, and would redeem it by his Death: But by this means we were, though innocent to lose our Lives by dishonor, and to fasten a stain upon our Memories by our death. The Priests, their impudent Lyes at their deaths

in denying the matters of the Plot, of which they were upon clear evidence Convicted and Sentenced, must have past for truths, and all our worthy men dying with protestations of their innocence, must to the everlasting infamy of our Religion and Nation, been accounted false and impious at their last breath, there is no reason to be assign'd of the patience of God or Man towards such miscreants; but that they may have time to add one impiety to another, until an easie vengeance triumphs over them; for though this last mentioned Plot is cleared beyond all exception, their Faces are hardened, and they are not yet ashamed; but have since contrived and suborned Witnesses to swear the very Discovery of the first Plot to be a false contrivance of a Plot against the Papists. To this purpose they suborned a Son by perjury to commit parricide against his Father, the greatest Sin against Earth, the other the greatest affront against Heaven; What a Religion is this that must be thus supported!

Nay, as if they did not fear or care to loose the favour of their most indulgent Prince, which they have possess since he chose to trust them rather than his Protestant Subjects, in making his escape at *Worcester*; they have contrived these two last Plots with such Art, as to bring them under His Majesties observation, and represented them as things fit for his encouragement: Sure if they were not urged

with the fears of a real guilt, and a restless Conscience of the Plot, they would never have adventured thus to have interested the honor of the King, and to tempt him to abandon them to the publick Justice of the Nation, which begins to grow impatient by the delays of it against this Hellish Plot : For we have had four Parliaments dissolved since the Discovery of it, one a darling to the Crown. The bringing into question the Dissolution of that Parliament in the House of Peers, upon the reason of an unnatural Prorogation, was not long before censured, and some great Lords imprisoned, therefore proceeding to unwarrantable, that it was after thought fit by that House to obliterate the Memory of them ; so necessary was that Parliament then thought to the service of the Crown. The Dissolution of that Parliament gave us reason to fear that the King had no more business for Parliaments. By these Dissolutions, no publick ends that are intelligible are served, no interest is gratified, no persons of any sort receive their satisfaction but the Plotters, and the Plot are respited thereby from publick Justice, and gain time to bring the Plot to effect.

This is the end the Papists have served, but the King our great Physician of State, had another reason that hath governed him, for he knew the strength of the Plot, our Disease, and that a Disease that is dangerous, is sometimes

to be palliated until the season comes to make a thorow Cure, for it many times kills the patient to precipitate the Crisis; all these Demonstrations of the Plot are past under every mans observation.

But that we know so little of it after all this time: It is now above three years since the first discovery, that the Plotters now ordinarily escape Justice. That a great Judge did abate his first Zeal in punishing the Plot, least he should exasperate it, and Reason of State might thus require it.

These things prove the greatness and strength of the Plot as well as the reality of it, these declare the Plotters interest is great, that the Plot is yet unbroken, stanch and hopeful, and therefore we are not to believe our selves well, and live *sine Regimine* as the Physicians say, but to expect address to and desire our Cure. And that the Papists think it yet hopeful, is evident from the Priests and the Lawyer, abjuring their guilt with their last breath. We had the honest Confessions of the Convicted Priests and other Traitors, of the Popish Treasons of which they stood Convicted in the time of Queen *Elizabeth*, and in the time of King *James*, of the Gun-powder Treason. What then could induce our Plotters Convict, to utter most solemn perjuries the next minute before they were to appear to God? nothing sure but that they then hoped that the Plot might

be executed ; they did it for the interest and service of their Church , and for the better bringing it to effect : For which they dyed, and for which at their deaths, to conceal, they adventured Heroically upon lyes and perjuries, which if confessed would have been frustrated and become Abortive : For it must not be believed that that Church is so degenerate, as to permit and allow men to such impieties, for the punctilio's of honor, though of the Church it self: But while they are not done for the sake of him that commits them, but for an important interest of their Church, (such as the carrying on of this Plot) they say they loose their nature by the direction of the intention, they become a pure piece of mortification and self denial, an adventure to trust God in what they do for his sake, and for his service, and their Casuists will no more call them in this Case lyes or perjuries, than *Abraham's* offering up his Son *Isaac* (though that was at Gods expresse command) was murder. But the God of Truth, that God who hath declared, that when he himself in any intercourse with Mankind interposeth an Oath, that the matter under that Oath is irrevocable, peremptory and absolute, cannot license or dispense with perjurious falsehoods for any end whatsoever.

But I must remark one thing more, and that is, touching the credit of *Dr. Titus Oats*, and *Capt. William Bedloe*, viz. That they have been
incurious

incurious in their conversation, have followed their own natural course, allowed themselves in their passions, have been apert and unreserved, have not cared who they offended, have sought no mans favour, seem to care for no mans opinion, have valued and supported themselves only by their veracity, and have seemed to set all the World at defiance to find a flaw in their evidence, and have had little of friendship or esteem, but for the sake of their discovery. Besides that so long a time hath not afforded a possibility by all the Artifice, Interest and unhallowed frauds of *Rome*, to falsify any one part of that evidence. But numberless events have given credit and authentickness to their Testimony: Did ever any feigned Testimony bear it self up with so much Confidence, Bravery and Assurance? was there ever any false witness that did not endeavour to render himself acceptable, to bespeak favour which draws after it credit, and to appear of the most unexceptionable behaviour? Their faults and imprudences such as they have been, we would not have wanted to make their evidence beyond all exception.

The undoubted truth of their evidence alone, hath given them the civil respect of all honest men, and will give the Doctor the publick honors of the Nation in due time. I will not recite the innumerable Sham-plots contrived against the Protestants, every one of them a Demonstration

monstration by it self of the truth of the Popish Plot, because I have no design to exasperate, but awaken these men that are asleep and secure in this storme.

This trouble of demonstrating of the Plot, may seem unnecessary to the judicious, nay to the plain sort of honest, upright and well meaning men; and so it would certainly have been, had not some young Gentlemen by this paltry thing called Wit, been corrupted in their judgments, and brought into a Scepticisme, and wild undetermination in a matter of so great concernment.

This despicable faculty hath made a famous Gentleman, who hath a liberal dose of it, a Writer of Books caused him to waste so much Paper, and abuse so many Readers; but in all that I have read of him, there is nothing true and sincere, or truly and sincerely said, his Judgment is made false by his Phantasie, or he hath serv'd a turn by his Versatile windings and Wily conceits. That dangerous faculty that he indulgeth hath imposed upon him, which the severe and honest enquirers after truth, are concerned to mortify and suppress. And I do earnestly recommend to all ingenious Gentlemen that would be rightly instructed and informed, neither deceive others, nor would be deceived themselves, as they love truth and virtue, wisdom and sober thoughts, to dispise this sort of wit in others, and repress it in them-

themselves: And never allow it to be used, but in the hours of mirth, in the Relaxations of their minds from serious Contemplations and matters grave and weighty, where this prophane thing wit ought always to be shut out with care.

Enough hath been said for rectifying the mistakes of any true Protestant, especially any Clergy-man of the Church of *England*, which you have objected against them about Government or Parliament, dissenters from the Church of *England* and Popery. Especially when it is made apparent that these mistakes are made serviceable to the Popish Plot, and the means which that party prosecute to compass and bring about the ruine of our Church. But that nothing may be wanting, that lyes in my poor power, for pulling their Foot out of the Snare, I shall more distinctly consider them.

First, I shall desire them to consider what our Government is, and where the true knowledge of it is to be found: And where can it be found, but in our Statute Books, the Commentaries of our Law, the Histories of our Government, and of the Kingdom. Search them if you be at leisure, if you are not, consult those that have read them, and whose business and employment it is to understand them, and you cannot fail to be informed.

That the King hath no power to make Laws,
that

that both Houses of Parliament must joyn with the King in making a Law.

It can with no more reason be concluded that the King hath the Legislative power, because his Assent makes the Bills in Parliament Laws, than it can because the third Unit added to two makes a Triad, that the other two do not go to the making of that number, when a matter's moved from the King in Parliament to pass into a Law the Commons consent last. The Let-

Sir *E. Cook* ters Patents of *Ed. 3.* for making the
8: R. Eldest Son of a King in Succession
Prince of *wales*, and Duke of *Corn-*
wall was confirmed (as there must have been, otherwise they would have been void) by the House of Commons. And yet we will not say, that the House of Commons can make a Prince of *wales* or Duke of *Cornwall*. And yet upon no better reason than this, some men will talk as if they believed themselves, that the Legislative power is in the King, when no King of *England* yet ever pretended to it, but by their process of Law have punished such officious and mischievous Knaves.

They will tell you that the Laws are the measures of our Allegiance, and the Kings Prerogative, and declare the terms of Obedience and Government.

That a Legislative authority is necessary to every Government, and therefore we ought not to want it; and therefore Parliaments in
which

which our Government hath placed the making of Laws, cannot be long discontinued, nor their Conventions rendred illusory and in vain, which is all one as to want them.

That to Govern by Laws implieth that great fundamental Law, that new Laws shall be made upon new emergencies, and for avoiding unsufferable mischiefs to the State. By the Statutes of 4 *Ed. 3. c. 14.* 36. *Ed. 3. c. 10.* it is provided that Parliaments be holden once every year. The Statute of this King required a Parliament every three years, which being an affirmatory Law, doth not derogate from those of *Ed. the 3.* But if the King doth not call a Parliament once in a year, He neglects these Laws, and if he delays calling a Parliament three years, he neglects the other Law of his own time to. And for that he is by the Law intrusted with the calling of Parliaments, He is at liberty to call them within the times appointed. And that Laws ought to be made for Redress of mischiefs that may ensue, appears by the Statute of provisors 25. *E. 3. cap. 23.* In which we have these words.

Whereupon the Commons have prayed our said Sovereign Lord the King, that sith the right of the Crown of England, and the Law of the said Realm is such, that upon the mischiefs & Damage which happeneth to this Realm, he ought and is bound of the Accord of his said People in his Parliament thereof, to make Remedy and Law in avoiding the mischief and damage, which whereof cometh, which that King agreed to by his Royal Assent thereto given.

I dare be bold to say, that never any Bill in Parliament was lost, and wanted the Royal Assent that was promoted by the general desires of the people,

If Popery therefore (which is the greatest mischief to us that ever threatned this Kingdom) can be kept out by a Law, we ought to have such a Law, and nothing can hinder such a Law to be past for that purpose, but want of an universal desire to have it. I desire these Gentlemen to consider how they will answer it to their Saviour at the last day, if they suffer his true Religion, and the professors of it to be destroyed and persecuted, when nothing but their desires of a thing lawful to be had, and of right due, was requisite to prevent it. Their sufferings will be just and righteous from God, if their sin occasioneth it, and very uncomfortable to themselves.

The extent of the Legislative authority, is no where to be understood, but by our Acts of Parliament in which it hath been exercised and used, and by such Acts that declare the extent of its power, by the 13. *Eliz. cap. 1.* it is made Treason during that Queens Life, and forfeiture of Goods and Chattels afterwards. To hold, maintain and affirm, that the Queen by the Authority of the Parliament of England, is not able to make Laws and Statutes of sufficient force and validity, to limit and bind the Crown of this Realm, and the descent, limitation, inheritance and Government thereof. And this authority was exercised by Entailing the

the Crown in Parliaments, in the times of *Richard the 2d. Henry the 4th. Henry the 6th. Edward the 4th. Richard the 3d. Henry the 7th.* thrice in the time of *Henry the 8th.* and upon the Marriage of Queen *Mary* to King *Philip* of *Spain*, both the Crowns of *England* and *Spain* were Entailed, whereby it was provided that of the several Children to be begotten upon the Queen, one was to have the Crown of *England*, another *Spain*, another the *Low-Countries*. The Articles of Marriage to this purpose were confirmed by Act of Parliament.

Those that are truly Loyal to our present Sovereign, have reason to recognize with high satisfaction, that such a power of altering and limiting the descent of the Crown, is duly lodged in the King and States of the Realm: For under the authority of an Act of Parliament of the Kingdom of *Scotland*, we derive ourselves to the happiness of his Government, and and He his title to the Crown of *Scotland*, which drew to him the Imperial Crown of *England*. For *Robert Steward* first King of *Scotland* of that Family, lived in concubinate with *Elizabeth Mure*, and by her had three Sons, *John*, *Robert* and *Alexander*, afterwards he Married *Eufame* Daughter to the Earl of *Ross*, and after was Crowned King of *Scotland*; He had by her *Walter* Earl of *Athol*, and *David* Earl of *Straherne*. When *Eufame* his Wife dyed, he Married *Elizabeth Mure*. After that by one Act of Parliament,

ment, he made them first Noble, that is to say, *John* Earl of *Carrick*, *Robert* Earl of *Menteith*, and *Alexander* Earl of *Buchquhane*. And shortly after by another Parliament, he limited the Crown in Tail Successively to *John*, *Robert* and *Alexander* his Children by *Elizabeth Mure* in Concubinate, and after to the Children of *Elizabeth Ross* his Legitimate Children; who are to this day in their issue by this limitation, by authority of an Act of Parliament in *Scotland* barr'd from the Crown, and we hope ever will be, by the continuance of the Line of our most Gracious King. For note, that though a subsequent Marriage by the civil Law, which is the Law of *Scotland*, in such cases doth Legitimate the Children born before Marriage, of a Concubine; yet it is with this exception, that they shall not be Legitimated to the prejudice of Children born *afterwards* in Marriage, and before the Marriage of the Concubine. Besides the reason of the Civil Law in Legitimizing the Children upon a subsequent Marriage, is this, *viz.* a presumption that they were begotten *affectu maritali*, which presumption fails where the man proceeds to Marry another woman, and abandons or neglects his Concubine.

But I desire these Gentlemen that are so unwilling to be safe in their Religion, which I believe is most dear unto them.

That if any Law should exceed the declared measures of the Legislative authority, though
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in such Case they may have leave to doubt of the lawfulness of such a Law, yet if it be not against any exprefs Law of God, they will upon a little consideration, determin it lawful, if it be necessary to the Common-weal, for that nothing can be the concerns of men united in any Polity, but may be govern'd and ordered by the Laws of their Legislature, for publick good ; for by the reason of all political societies, there is a submission made of all Rights, especially of the Common Rights of that community, to the Government of its own Laws.

For further satisfaction of the lawfulness of the bill of exclusion. See a Book called *The great and weighty Consideration considered.*

But all this and a hundred times as much will not satisfy some Gentlemen, of the lawfulness of our Government, & the extent of the Legislative power of Parliaments; since they have entertained a Notion, that Monarchy is *jure divino*, unalterable in its descent by any Law of man, for that it is subject to none. That all Kings are alike absolute, that their Will is a Law to all their Subjects: That Parliaments & the states of the Realm, in their Conventions can be no more than the Monarcks Ministers acting under and by his appointment, which he may exauctorate and turn out of Office when he pleaseth. For there can be (say they) under the Sun no obliging Authority but that of Kings (to whom God hath given a plenitude of power) and what is derived from them: That this Divine Absoluteness may Govern, and exercise Royal power immensely

menſely, and that it is ſubject to, nor to be abated or reſtrained by any humane inventions or contrivances of men : (however neceſſary and convenient Kings have thought them in former Ages) by ſuch methods and ſuch offices and Officers (of which number the States of the Realm may be, or not be, as Kings ſhall pleaſe) as they ſhall by their abſolute Will order or appoint. Our Parliaments, ſay they, are *Rebellious and an Uſurpation upon the unbanded Power of Kings, which belongs to every King as ſuch jure ordinario, and by Divine inſtitution. That a mixt Monarchy as ours is, is an Anarchy, and that we are at preſent without a Government, at leaſt ſuch as we ought to have, and which God hath appointed and ordained for us : That we by adhering to the preſent Government are Rebels to God Almighty, and the Kings unlimited Power and Authority under him, which no humane conſtitution, no not the Will and Pleaſure of Kings themſelves can limit or reſtrain. For that jura ordinaria & divina non recipiunt modum, That the Legiſlative Power is ſolely in the King, and that the buſineſs of a Parliament (if they would think of being only what they ought to be) is only to declare on the behalf of themſelves and the people (that ſend them for that purpoſe certainly) the obedience that is due from them to ſuch Laws as the K. ſhall make, and that they may be laid aſide wholly when he pleaſeth. And after all this, what matter's it with them what we ſay, our Government*

vernment is, hath been, or where the Legislative Authority of the Nation is placed, or how used.

But I desire these Gentlemen to consider how they come to these Notions, upon what reason they are grounded. How a Government established by God and Nature for all Mankind, should remain a secret to all the wise, good, just and peaceable men of all Ages. That Kings should not before this have understood their Authority, when no pretences are omitted for encrease of power and enlargement of Empire. I desire them to consider that this secret was not discovered to the World before the last Age, and was a forerunner of our late unnatural War, and is now again revived by the republishing of Sir Robert Filmer's Books, since the Discovery of the Popish Plot.

I wish they would consider that the reasons ought to be as clear and evident as Demonstration, that will warrant them to disscost from the sense of all Mankind, in a matter of such weight and moment.

That to mistake with confidence and overweening in this matter, will be an unpardonable affront to the Common sense of Mankind, and the greatest Violation of the Laws of modesty. I desire that they would consider and rate the mischiefs that will certainly ensue upon this opinion, and whether a probable reason can therefore support it.

That they would thoroughly weigh, ponder and examine the Reasons of these bold and new *Dogmata*. For their enquiries ought to be in proportion diligent and strict, as the matter is of moment, and if they are not, their error and mistake will be very culpable; and the sin of the error aggravated to the measure of the mischief which it produceth and occasioneth.

Where is the Charter of Kings from God Almighty to be read or found? for nothing but the declared Will of God can warrant us to destroy our Government, or to give up the Rights and Liberties of our people. If they are lawful, I am sure it is villany to betray them, since all political Societies are framed that all may assist the Common Rights of all. I cannot imagine they can pretend an umbrage from the Holy Scriptures for such unheard of opinions.

The Jews indeed had a Government, and Laws of Gods framing and appointment, and a King of their own choosing, and such a King as they desired by God's permission they had. But their form of Government ought with less reason to be the Rule of all kingly Governors, because it was a Government chosen by themselves, then the Laws of the Jews ought to be the Laws of all Nations (which they are not) though made and enacted by God himself.

Christ would not make himself a Judge in a private

private Right submitted to him. He determined the right of the Roman Empire, by the possession of Sovereign Authority, and such as the whole world had made it, his Disciples were obliged to acknowledge it, by their Obedience and Submissions, which is the summ of the Apostles Doctrin in this matter.

The Christian Religion instituted no form of Governments, but enjoyns us to be obedient to those we have, not only by express command in the case, but by its general Rules of a most refined, improved and extensive morality.

But though I said the Scriptures have not prescribed or directed any universal Form of Government, yet the Scripture hath declared the falshood of this new Hypothesis of Kingly Government to be *Jure Divino*, or by *Divine Right*. For St. *Peter* 1 *Peter* 2. 13. and 14. styles Kings as well as the Governors under him the ordinance of man, which cannot have any other sense, but that men make them and give them their powers. By St. *Paul* the power of Government indeed is called Gods Ordinance *Rom.* 13. 2. but that is, for this reason, because in general God approves of Governments, as necessary to the well being of Mankind, for the improvement of humane nature, for the punishing of Vice, Encouragement and security of virtue, without them it being impossible to live honestly and in peace. And he hath made them the under Ministers of his providence

vidence and care over Mankind, and expects of them, that they should promote his true Honor and Worship in the World, which will be always accompanied with the exercise of all civil Virtues. These two different places must be so understood, that they may be both true, and by no other interpretation can they be reconciled and made consistent.

It is impossible, that any thing can be of mans appointment, which is of Gods Ordination, there can be no such thing, as a Collegislative power of Men with their Maker, Government therefore is from God, as he hath made Governments necessary in the general order of things, but the specification thereof is from Men, and the best definition that can be made of Government is, in the words of both the Apostles put together *Dei Institutum Arbitrium hominum*, and such Governments, which men make God approves and requires our obedience to them upon all those reasons, which make Governments necessary.

The natural and easie consequence and result of these Scriptures is this, which I desire those Gentlemen to observe. That whatsoever is not lawfully established by men, no Law of God nor the Christian Law doth oblige us to obey. The Christian Religion doth equally condemn in the reason of its Institutions, Usurpation, and Contumacy. Where the Apostle admonisheth us, that if we be free we should

not

not become servants, he hath by virtue of that Admonition, made it commendable not to suffer the Encroachments of power over us. Most certainly therefore as the Christian Religion doth not prejudice the Sovereign Rights of Princes, such as they are in the several forms and Modells of Monarchical Governments, *non eripit terrestria qui regna dat cœlestia as Sedulius*, so doth it not enlarge them; when by the Gospel God made us free from his own positive Laws to the Jews, he did not intend thereby *de Jure*, to render us slaves to the Arbitrary pleasure of Men.

No Man intends by any thing in the Scripture, that all mankind is obliged to any one form of Government, and therefore all Men are left to their own. It hath not therefore altered the terms of Government and Obedience, that every Nation hath Established for themselves, but hath confirmed and strictly obliged the observance of them.

To Obedience, to Government; we are obliged by as many ties as there are Christian Virtues, and he must disown his Christianity, that departs from his due Allegiance. And since our Saviour is declared King of Kings, and Lord of Lords, all Kings, Christian Kings especially, are to govern in Imitation of his mercy and goodness, and in subserviency to the Interest of his Religion and Kingdom.

Regum timendum in proprios greges,

*Reges in ipsos imperium est Fovis,
cuncta supercilio moventis.*

Whence then is this absolute Authority of Kings, if it come neither from God nor Man.

Give me leave now to inform you, that these opinions render you all Traytors, guilty of Treason of State, *perduellionis rei* obnoxious to be punished as Traytors by an Authority lodged in Parliament, In the Constitution of the Government.

You your selves must needs condemn your selves to have forfeited all your own, who hold such Principles, that tend to destroy every Mans Right, by resolving all things into the absolute pleasure of a Monarch, in which you mostly disserve the King, and are contrary to His Majesties late Declaration. The Men of these Principles the less of the Government, they are entrusted with the better, for the less they have to give up and betray. I confess, if I could believe, that this Doctrin was become Orthodox among them, and the prevailing opinion of the Clergy, I should conclude us to be the most unhappy people under the Sun. This is an Hypothesis indeed, that will bring on *new Heavens and a new Earth*, but such wherein no peace or Righteousness can ever dwell. But I deem all such as are Defenders and Promoters of it, do deserve a civil Excommunication, more smarting then their Ecclesiastical, and to be condemned to live upon, and only feed themselves with
their

their thin speculations, and to be excluded from any share of that Government, that they professedly in their Principles betray, to be punished as seditious persons, and most mischievous Schismatics, far more intolerable in this matter than the scrupulous brother-hood, for their boglings at an indifferent and insignificant Ceremony. For that to the ruin of our Religion and destruction of the publick peace, they divide from that polity, to which by drawing here their first breath, they made Faith, and to which the condition of their birth doth oblige them, they falsify that which *Arrian* in his *Epiſtetus* calls the *ἁγία ἀρχή* than which nothing is more sacred and inviolable.

By creating themselves a new Allegiance, and obtruding it upon their fellow Citizens, and Members of the same Kingdom, they set up a Kingdom within a Kingdom, more dangerous and mischievous than the Papal *Imperium in Imperio*, which certainly will be introduced, if this Modern, and monstrously extravagant opinion can prevail by a general Credence.

It is criminal, and no less dangerous to the being of any policy to restrain the legislative Authority, and to entertain Principles, that disables it to provide remedy against the greatest mischiefs, that can happen to any Community. No Government can support itself without an unlimited Power, in providing for the happiness

happiness of the people : No Civil establishment but is controlable and alterable to the publick Weale. What ever is not of Divine Institution, ought to yield and submit to this Power and Authority.

The Succession to the Crown is of a civil nature, not established by any Divine Right. Several Kingdoms have several Laws of Succession, some are Elective, others Hereditary under several Limitations. All humane Constitutions are made *tum scilicet humane imbecillitatis*, under reasonable exceptions of unforeseen accidents and Emergencies, that may happen in humane Affairs, and so they must be intended and so interpreted. The several limitations of the descent of the Crown, must be made by the people in conferring the Royal Dignitie and power which is more or less in several Kingdoms.

The descent of the Crown is governed according to the presumed will of the People, and the presumption of the peoples will, is made by measuring, and considering what is most expedient to the publick good, whereas private Estates are directed in their descent according to the descendents. And this is the reason that the descent of the Crown is governed by other rules than private Estates. Only one daughter, and not all as in private Estates, shall succeed to the Crown, because the strength of the Kingdom is preserved when continued united, and the peace and concord of the people better

Estab-

Established. A son of the second venter shall inherit, which is not allowed in private Estates, because a son of the second venter is equally of the blood of the great Ancestor, upon whom the Crown was first conferred by the people, or after he had got into the Throne obtain'd their Submissions, & may equally participate of his Virtues.

If the Royal Family be extinct, it belongs to the people to make a new King, under what limitations they please, or to make none; for the Polity is not destroyed if there be no King created, and consequently in case of this cesser or discontinuance of the *Regnum*, there may be Treason committed against the people. By all which it is evident, that the succession to the Crown is the peoples right: And though the succession to the Crown is Hereditary, because the people so appointed it, would have it so, or consented to have it so. Yet in a particular case for the saving the Nation, the whole line and Monarchy it self, it may be altered by the unlimited Power of the Legislative Authority. We have been more just to the Royal Succession, than the wonderful Sir *Robert Filmer*, for his Hypotheses will not allow at all of Hereditary rightful Succession. For the establishing the right of the Universal Empire of the World in *Adams* right heir, since this illuminato (hath enlightned the world in this secret,) no Successor can derive any hereditary right from his Predecessor. His Title can be only his own possession, for no man can claim

claim by descent the Usurpation of his Father, but he that is not conscious to the wrong, and is *bona fidei possessor*, under the presumed right and title of his Father. I would be understood to speak as the matter can be considered in a free Reason, not under the prejudice of any positive municipal law, for to such laws the right of Crowns, as the Renowned Knight will have it, are not submitted.

So that here in this matter their Knight fails them, and can give them no help. Their other Friend the great *Leviathan Maker*, is so far from establishing an Hereditary Succession, that he leaves Kings to be rightfully assaulted, deposed and destroyed, by any person that can, who stands in danger of being destroyed by the King, though justly condemned to death; *Leviathan Part. 2. Cap. 21. Those* (saith he) *that have committed a Capital Crime, for which they expect death, have the liberty to defend themselves by Arms as well as the Innocent.* But I mention him only to render him detestable, for I take his Books to be the *dehonestamenta humani generis*. But I desire them to regard the sense of all Mankind, in the words of *Isidorus Pelsiota*, ἱερὰ ὡν καὶ βασιλεία καὶ ἐν ὁρῶσι τέλει τῶν ὑποκόωντων, This Governed the Judicious and Learned Dr. *Falkner*, for when he had carried Christian Loyalty as high as he could, to the honor of our Religion and the benefit of the World for which we are all extreamly beholden

to him, he concludes thus in his excellent Book called *Christian Loyalty*. That if any Prince undertakes to alienate his Kingdom, or to give it up into the hands of another Sovereign Power, or that really acts the Destruction or the Universal calamity of his People, he tells us Grotius thinks that in his utmost extremity, the use of a defence, as a last refuge ultimo necessitatis presidio is not to be condemned, provided the care of the Common good be preserved. And if this be true saith he it must be upon this ground; that such attempts of ruining de ipso facto include a disclaiming the governing of these persons as Subjects, and consequently of being their Prince or King; what unreasonableness is there then in shutting the door upon him, and making it fast against him by an act of State, who hath excluded himself by his principles and designs. For the truth of the fact, I shall only refer you to *Secretary Coleman his Letters*, wherein he saith that his Masters interest, and the King of France his interest, is one and the same, and their design their glorious design the same (viz) the extirpating the Northern Heresie, how far the King of France hath complied, with the design the cruel Persecution, and exils of his Protestant Subjects, who at the time of that letter, were under the security and protection of the Laws of that Kingdom, the Faith of that Crown, do declare to the world. And by what secret influences I know no, the is made so great, his conquests so easie and expedite,

dite, that he is like to do the work himself here in *England*, and go away with all the Glory. But if the work must lye upon our hands, let no man think with himself, that Popery is not to be introduced here, because the numbers of Papists are few, for that will not render the design impracticable, but the execution of it were cruel and barbarous, a whole Nation upon the matter must be corrupted from the Faith of the true Religion or destroy'd. One single arm of an ordinary strength not resisted, may assassinate a whole Nation.

Let no man betray his Country and Religion, by pretending the example of the patience, and sufferance of the Primitive Christians for our rule.

The Reformed Religion hath acquired a civil right, and the protection of Laws, if we ought not to loose our Lives, Liberties, and Estates, but where forfeited by Law, we ought much rather not to loose them for the profession of the best Religion, which by Law is made the publick national Religion. And it is strange that some men of the same Religion in profession can think (that notwithstanding) it makes no matter what is done to a man, if he be Religious, but if he be not so, the least publick injuries and injustice may be resisted, vindicated, remedied, and by right defended by old Laws, or new ones, to be made for that purpose.

The Christian Religion was publisht, when the

the whole world was Pagan, and therefore it was submitted to such usage as the Governments would give it. But when the Christian Faith, had by miracles of patience declared it self to be of Heaven, and of a Divine Original: According to the Prophecies on that behalf, it took possession of the Empire, and Crowns, and Scepters became submitted to the Cross, and the Christians acquir'd a civil right of Protection and Immunity, which they ought not, they cannot relinquish and abandon, no more than they can destroy themselves, or suffer violence and cruelty to destroy the Innocent. Such as thus perish shall never wear a Martyrs Crown, but perish in the next world for perishing in this. This will be interpretatively Crucifying Christ afresh, after he is received up into Glory. i. e. After his Religion is exalted into dignity and honor and civil Authority. If the senate of Rome had been Christians, they would never have given up the Government to a *Pagan Augustus*, with a power to him and his Successors, to make laws for extirpating the Christian Faith, what is said of the Christian Religion, and Paganism holds between the Reformed Religion and Popery.

If any man is so vain as to say, that an unalterable course of Succession, is established amongst us by Divine Right. If say he is a man fitted to believe transubstantiation, and the infallibility of the Pope; he is deeply lapsed into fana-

fanaticism, he dreams when he is awake, and his dreams are dreams of phrensie. There are somethings so false, that they cannot be disproved, as somethings are so evidently true that they cannot be proved. This proposition hath no color to ground it self upon, no medium to prove it, no argument for it which is to be answered, nor nothing more absurd than it self to reduce it to: But if any shall add, that this Doctrin is the Doctrin of the Reformation, and adventure to tell the people so, they are the most impudent falsaries that ever any age produced, when there is scarce a Child, but hath heard what was done, said, and maintained, by the Clergy of *England*, in the case of *Mary Queen of Scots, a Popish Successor*, in the earliest time of our Reformation here in *England*.

Our Age is blessed with a Clergy renownedly Learned, and Prudent: by the Providence of God, and the piety of our Ancestors, they possess good, though not to be envied Revenues and Honors.

It is scarce possible, they should have many among them, that can countenance a proposition so wickedly impious and sacrilegious (that we cannot have new Laws, but must loose the old, at the pleasure of a Popish Successor) against not their own interest, and the Rights of the Church, but against the Rights and Liberty of Religion it self. For she is capable of Franchises and Immunitys: which ought above all things

things to be most zealously asserted and defended by her Ministers, can they themselves with their own hands ever pull down her Hedg and destroy her Defensatives, and expose her helpless to the rage of her implacable Enemies, and suspend all the Legal security she hath for her preservation, upon the Life of our present King, whom God long preserve. If Kings be admitted to have a power to make Laws, One Proclamation may establish the Popish Religion amongst us, which the Papal Bulls so long as that See continues, will never be able to effect. Next to Religion her self, the Revenues of the Church challenge their faithful care, for they are at best but Usu-fructuary Trustees of her Endowments for the Succession, which they will wretchedly betray to an Arbitrary Successor, if they do not repress such Opinions that pretend to change the Government into an absolute *jure Divinity Monarchy*, which will leave nothing *jure divino* but it self and the Pope-dom, Kings for their so doing have the authority of Sir Robert Filmer, who affirms in his Treatise called the *Power of Kings*, Fol. 1. *That the Laws, Ordinances, Letters, Patents, Priviledges and Grants of Princes have no force but during their Life, if they be not ratified by the express consent, or at least by the sufferance of the Prince following, who had a knowledge thereof.* This is but the necessary consequence and result from the Doctrine of the absolute power of a Prince,

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for in such Government the Concessions of a Predecessor can no more oblige the Successor, than he can Govern when he is dead; and the Successor must be absolute in his time, as the Predecessors were in theirs. But in vain is the Net spread, in the sight of any Bird; this deceit is of so gross a thread, that it cannot pass with the common people, much less upon our Clergy; but I will not dissemble what may be the true reason of the seduction of some young good natured Gentlemen of the Clergy: They perswade themselves that if these principles and opinions of the *Unlimited Power of Kings* had been received, the late Wars had been prevented: Not rightly considering, that if such opinions had never been broached, or Universally rejected, that War could never have ensued; and we should together with peace have enjoyed our ancient Government, which our Ancestors transmitted to us, without that miserable *inter-regnum*.

I would not be perversely understood by any man, as if I went about to justify our late War: This is all I say, that every Government once established will continue for ever, if all the parts of it would unalterably consent to preserve it, to which their natural Allegiance doth oblige them: And never any Prince endeavored to change the Government, but where part of the people were first willing, or content to have it so.

Those

Those false flatterers that go about to remove the boundaries of power, and change the Government, are the greatest enemies to the quiet and happy Reigns of the Kings, and the peace and prosperity of Kingdoms.

And if they do adventure to call their fellow Subjects, by any opprobrious names of disloyalty, because they will not joyn with them in such change, they are as absurdly impious and insolent, as any Prince or State would be, who should challenge another, as free and absolute as himself, for his Tributary and Vassal; and traduce him for a troubler of the World, because he would not Compose the Quarrel, thus injuriously sought, with the surrender of his Crown and dignity.

I desire these Gentlemen to consider, that the happiness of a Nation, is best supported with Truth and Justice: This new Doctrine is not true, and whosoever entertains a belief of it, is not only barely mistaken, but will be lead by the mistake, into the most mischievous, impious and sacrilegious injustice, and treachery.

It is very agreeable to a good man, to embrace a proposition, with an easie belief that offers the least seeming probability of a security against the miseries of War, by all means to be avoided. But this Doctrine of the *Divinity* of Kings, is most dangerous to the Peace of Kingdoms, for it is pregnant with Wars: Besides that it will give bad Princes, which sometime

hereafter may be Born into the World, (for such there have been now and then) power to make their Reigns worse then War, and Plague, and Famine to boot.

The Panick fear of a change of the Government, that this Doctrine occasioned, and the Divisions it made among us, was the principal cause of the late War.

It is not without reason, that together with these new principles, revived since the Discovery of the Popish Plot, we have a perpetual din and noise of *Forty one*.

Then that fatal War begun, which ended in the destruction of the Prince, and ruine of the Church and State; The remembrance of it is the principal matter, that stuffs our weekly Pamphlets, and it is brought into common discourse, and grown so trivial, that it is mentioned and heard without abhorrence and regret: And what Service this can be to His Majesty, I do not understand; much better it were, that the memory of it were utterly extinct and abolished for ever, except only in the Anniversary of that great Prince, that so fell. Then I say, and then only is it fit to be remembered, when we are on our Knees to God Almighty, and in his presence affecting our selves, with sorrow and remorse, deprecating the like Judgments, and bewailing the National sins, that occasioned those; For notwithstanding the Glories of that Great Prince his unhappy death, and the
admired

admired Devotions of the *ἱερὸν βασιλικὸν*, The story of the Calamities of his people, (all his three Kingdoms involved in War, during his Reign) and the remembrance of them, will be with some Men not very Loyal, a stain and diminution to the Glories of the Royal Family. In Princes their Calamities are reckoned amongst the abatements of their Honor, and meer misfortunes are disgraces, and have the same influence upon the minds of the common people, as real faults and male administrations.

How then can this tend to the peace of the Nation, or the Honor of the King? what satisfaction is it to have our almost healed wounds, thus perpetually rub'd and kept green?

— *Quis sua vulnera victus
commemorare velit* —

Why should any of our Nation, insult over the miseries of his own, and neighbour Kingdoms, when he must be the most barbarous villain, and have develtled himself of all humanity, that is not deeply empassioned at the remembrance of them? If a *Thuanus*, or a *Philip de Comines* were to pass a Judgment, of the condition of our late times; upon the consideration of our late Tragedies, and the Preludium's to it in the Reigns of King *James* and the late King, it would be formed and pro-

nounced in these words of Tully, upon another occasion :

Atibi quidem, si proprium & verum nomen vestri mali queratur, fatalis quadam calamitas incidisse videtur, & improvidas hominum mentes occupavisse, ut nemo mirari debeat humana consilia divina necessitate esse superata.

But this is not all,

— *nec adhuc finitur Orestes.*

We are affrighted by the weekly Pamphlets, with the expectation of another Parliamentary War, and this is the true reason of the mention of the late War, that we may forgo our Parliaments for fear of another. So it is written in our publick prints, which are published under permission, as if Parliaments are designed to be rendered hateful, and to be feared as Plagues, Famines, or Inundations of the Sea.

But who is to begin it, who designs this War, the Pamphleteers, or those that let them on work, best know : We had never heard of any such thing, if the Mercenary writers of the Popish Faction had not told us of it, as they do weekly, and hitherto we cannot find any Colour for this affrightful Lye ; they are impudent so to talk of it, as if they believed it, and have brought some as weak men as they are false Knaves to a belief of it ; But to do them no wrong, those may best know what is to come

to pass, who have the power of contriving and designing.

Qui pavet vanos metus veros facetur.

The vilest Traitors cannot contrive a greater prejudice to the King and his Family, than by advancing such a dismal thing into credit and belief, for fears though but upon imaginary and false grounds, produce real effects, as well as they are in themselves really afflictive, and that almost equally, if of continuance to the evils feared. Do these men speak like true Loyalists, that are mentioning perpetually the Calamitous War, in the time of our Kings Father, and fright us with another now ensuing? after those Universal, Solemn and hearty Joys of the whole Nation for his Restauration, after so many Millions of Money, most dutifully issued out of the affections of his people, from time to time at His Majesties Royal pleasure, and nothing complain'd of, but that they have not opportunities of issuing ten times more, to the service of His Majesties Glory. Nay they speak of this ensuing War, as if the Royal Standard was already displayed, and the Rebels had made their Musters; which must certainly affect the Royal Family with the greatest danger.

If there were twenty *Traians* derived from one stock, that had Reigned in an uninterrupted Succession, Two immediate Successors, that

should have their Reigns successively attended with civil Wars, were enough to efface their own, and the glories and merits of such Ancestors : But base Caitiffs, you can no more truly believe the last Parliaments designed upon His Majesties Crown and Dignity to make War, and change the Government, than you can believe that every Mothers Child of them, before they came up to the last Parliaments, set his House on fire, and burnt his Wife and Children.

But these impudent Forgeries against the House of Commons, are contrived to make the people afraid of Parliaments, that this new model of Government in process of time, when we have an enterprising Successor, may take place, for the service of the Popish Religion. For upon the strength of Dr. B-----s performance, who hath with great labor found out (which it is hard for any man acquainted with our English History to be ignorant of) that our Parliaments were not always such as now constituted : this blessed change of our Government will never be atchieved, the Nation will never be perswaded, by any thing that he hath found out in his diligent research, that the House of Commons is an *over-grown wen*, an unnatural Accrescency to the Government, and fit to be cut off. Neither can the most insolent Paradox of Sir Robert Filmers Patriarcha, contribute much to this purpose. But that it may be

be able to deceive but a very few, for the time to come ; for the sake of such Gentlemen who have not Chosen their side, are glad of the least Color, or dream of a Shadow, a single opinion of any body, it matters not whom to relieve their modesty , in their notorious defections from Truth, Justice and the Government. I shall here consider his Hypothesis, especially for that it was Re-printed, and is magnified by the *Factors* for the Popish Plot.

And first, I will draw it out shortly, in all its strength, and make it more argumentative than he hath left it, (for he hath left his willing readers to find out the Argument, and to make the Conclusion) Adam saith he, *was the Father of Mankind, that to him as Father, belonged an Absolute dominion over all his descendents ; that all Men being so born, are born under subjection to such an Authority: This authority so reserved upon us by God, and the condition of our birth, and the manner of coming into the world, is to be submitted to, in the person of the present King , who by becoming King, is for that reason vested with this absolute Authority. This power and the duty of our subjection to it, results from our being Born, and coming into the world, after the manner of men. This power of Kings is grounded (by him) meerly upon this natural resultance, and not from any positive and expresse Revelation from God, for such, neither we, nor, he yet ever*
heard

heard of. We will now then consider, what there is of weight in this fictitious Reason of Government, in which the World is so lately illuminated by this Speculator; what force there is in it to unravel all Models of Government, that are framed in the World, to confound Kingdoms and Nations, and to give Warranty to the bringing upon us, all the miseries that are designed by the Papists for us, which we are to be prepared to suffer, with most conscientious patience, from the comforts and supports of this insolent and vain pretence.

I appeal to the Reader of him, whither in thus stating his Doctrine, I have not made it more Argumentative, and concluding to his purpose than he left it: I will take this method of remonstrating the fertility of his *Hypothesis*.

By considering what a Father is, and what his Duty towards, and Power over his Children, in which it will be found, that nothing of Empire belongs to him as Father, that no more belonged to *Adam* over his Children, than did to any of his Children over their own.

That the Authority of Parents over their Children, continues together with Sovereign power, and is not at all abated by it, and that it cannot be the same, because it continues entire with it.

That

That there is no footsteps in the Records of the Old Testament, to verify his *Hypothesis*; that we could not have wanted some Declarations about it from God, (if true) it being a matter so necessary for us to know, That no claims were made, (that we know of) to any such authority in the earliest times, when the Right was unprejudiced, and must have been best understood, and could not have been forgotten, as now it is utterly.

Besides that it was never used. The first Histories Recorded in the Bible, makes every Child of the common Ancestor, alike independent and absolute, and so it would for ever have continued: And to this day we should have been in the state of Nature, and not United in any Government, and so no King yet in the World, notwithstanding the Paternal authority. That his Instances of exercising Sovereign power by the Fathers of Families, are not concluding, and to this purpose.

That admitting *Adam* had while he liv'd been Universal Monarch, (yet if there be no other reason and Foundation of Monarchy in the World, but this of Sir *Robert Filmer*) *Adams* right heir not been known, (and if he were might perhaps be an Ideot or Lunatick, some Candler or Botcher under a Stall, or mean Person unfit to govern) we can have no rightful King in the World, for certain it is, that there is nothing in the World so personal as
Rela-

Relations, and the duties and Rights that do result from them: for they are neither assignable to, nor can be exercised or exacted by and between any persons, but the Relatives themselves: So that this power of Sir R. F. hath no foundation of reason in the nature of things, was in Fact never exercised, and is now utterly fallen to the ground, and all Government with it. A more puffed, vain, senseless and unlearned Paradox, was never yet offer'd to the World, nor a thing more mischievous ever received.

The absolute Power of a Prince over his Subjects, is not at all connatural to the dutiful Care of a Father over his Children.

It was the good pleasure of God that this part of the immense world, should be planted with men endowed with a capacity to admire his power, wisdom and goodness, and therefore to render him praise and worship: he design'd that we should be happy in our own enjoyments, and promote the happiness of each other, which is not to be performed but by a mind serene, beneficent and loving. He provided that the disseminations of Love should run parallel, and be under a like necessity with the propagation of our kind. For the planting love in our nature, he instituted Marriage for Procreation, that we might owe our Being to the state of the greatest and most agreeable friendship, and tenderest affection. That for many years we should be educated by a pure single and unde-

undesigned love of our Parents: and the friendship of that conjugal State, should be maintained by, and principally exercised in, their common care of their issue.

Every Act of Love, of either of the Parents to the Child, being the best instance of love to the other of them; an endearment of a reciprocal love, and a provocation to the like love and care of the Child. God did likewise ordain and so it was, that all Mankind should derive from one stock, be made of one blood; and every Man, every Mans Brother of the same family and cognation. By this it was provided by the Father of us all, that we should be born into the World, under the tenderest care for our preservation and improvement of our Nature, and be powerfully enclined to love, and beneficence, whereby we may be pleased with our selves, and at Peace and Amity with our whole kind.

That the Generations of Mankind might certainly proceed, God planted in our Natures powerful and irresistible instincts to procreation which the *Jews* call a Precept, tho after this no Precept seem'd necessary, for encrease and multiply they make a Command. But we follow our own propensions and have no conscience of obedience to a Law, when we observe and follow them, which are so strong pleasurable and entertaining, that if God had not planted a restraint of Modesty in our

our Natures; and a sense of decency. We should over do the business, and degrade ourselves from the dignity of our Natures.

Thus far the Parents are fulfilling Gods appointments and gratifying their own Natures. What from all this can give them a right over their Child, all men coming into the world this way are no less free, then if they had been form'd in *Lucretius* his Bottles, and drop'd out of his imaginary matrixes, and we were all ~~all sorts of~~ & Aborigines.

In this they are only executing the appointment of God, are but his Instruments to bring us into this World, and are all along rewarded and entertained and caressed by the order of Nature. *Adam* ow'd this duty to God his Father, and so ordered it was, that he ow'd it to himself, and to his own natural propensions, pleasures and satisfactions to propagate. The several succeeding generations of men, as soon as they are men have as much Right to the enjoyment of themselves to the freedom of their own Will, and to live by their own measures as *Adam* himself had. Our Parents do not give us life, but hand it to us from the Fountain of being the Universal Father of all things.

Vitai Lampadu tradunt.

And this is allowed, acknowledged by all Mankind.

Mankind, for as soon as Children can Govern themselves, we declare them free that they are *sui juris* they are extrafamiliated and become themselves Fathers and acquire to themselves.

But that which hath imposed upon this Gentleman, I believe is, for that while they are to be educated, their Parents exercise an Authority over their Children which a souer Father may imagine to be power. This I believe gave the Gentleman his mistake, because he saith a Child and a Slave, doth not differ which is a shrewd indication that he was something too masterly over his Children. But all equal parents know and understand that the Education of their Children is duty and care, and may not improperly be called, a Sort of Generation Work.

For I pray let it be considered, that the foetus is not perfected as soon as it is extruded the Matrix, no not until it be able to perform, unassisted all the Actions of its proper life. That the life of a man is a life of Reason, that he cannot do the Acts of a man, until he hath it in the exercise of it. He is not a perfect foetus so as to be neglected by his parents, as soon as he can feed himself the man after this may miscarry, and if exposed by his parents, and not continued under their care be abortivated. Education

tion is a kind of Incubation. Our faculties are to be formed and drawn out into use, as well as our body, to be organized, before we can be denominated men, and while this is a accomplishing the parents are but executing the natural instinct of propagating their like, until they have made them men, they are not begotten in their own likeness. They therefore with an easie propension, and a natural care do apply themselves to offer things to their observation, to furnish their Memories, to try their judgments in little Essays, to render them discursive to draw out their faculties into use, until by little and little they arrive at discretion, and a power to form true judgments of what belongs to them, and to govern themselves in such Affairs and businesses, that are to employ them.

But while this is a doing, they are under a Government of love and care, by the Arts of Discipline to be trained up to perfection. Several freakishnesses and caprices are to be cured, and the strength and luxuriances of several natural Appetites, are to be abated and restrained; and they are to be held to attention and observation, and made patient of instruction, and correction is to be administered to these purposes, and by these measures; but this duty of Correction doth not participate any thing of the Nature of Civil Government. It hath nothing of the Nature of
punish.

punishment exemplarity or vindicative Justice

It is not for the gratifying of the Parents displeasure to secure him against wrong or injury to deter others, but to amend improve and better the Child, and always terminated to, and directed to that end, and by those measures it is tenderly and affectionately administered. It will not be impertinent to observe, that our Common Law, had no opinion of any Sovereign Authority in a Father.

And also that the Statute of 25 E. 3. which declares petty Treasons as well as high Treasons doth not declare, the sons killing the Father to be Treason, tho Treason it is, for a Servant to Kill his Master : In which we have the Authority of our Parliament, and of the constant opinion of our Judges. That the nature and relation of a Father and a Son, doth not favor any thing of Government, or of a servile or Political subjection. For that they have not made parricide Treason tho it is the most unnatural and most detestable Crime, and a far greater sin than that of Killing a Master.

But further to clear the true notion of a Fathers Authority, that it is duty and care, not Empire and absolute will. Let it be considered, that God by his right of Creation, hath an absolute dominion over us ; we are more his than we are our own, or than any thing can be ours. Yet when he was pleased of his gracious condescension to our capacity

capacity to quiet our fears of his power; and to invite our love and assure our hope, he did declare himself our Father thereby to assure us, that he would not rule us *pro imperio*, and according to his absolute right he had over us, that stile he himself delights to use, and give us leave to call him our Father, by which we all understand, that he will not proceed with us according to his Right of absolute domination, no not in the terms of Right and Political Justice. But that he will consider our frame, pity our infirmity, correct us as his Children, but not punish us with an exterminating Justice.

Amongst the *Romans* antiently no man was admitted a Judge in criminal Causes, but he that was a Father of Children, that the severities of a Judge might be abated by the tenderness of a Father, that he who had Children of his own, might have the more pity to those of others, so different is the office of a Judge from the natural duty and tenderness of a Father. And it is the greatest violence, that can be done to nature, to compel a Father to sit in Judgment upon his Son, and next to that of obliging and compelling a man to execute himself, to make it the Fathers duty to pronounce a capital sentence upon the Son, is the most unnatural thing in the world, the Father and the Son in this consideration are *conjunctæ personæ*, and when the Sin of the
 Father

Father is visited upon the son, the son is afflicted, but the Father is punished, and when the Son hath the *Question*, the Father is taken to be confessed *in tormentis filii*.

But for a further instance to make it appear, how incompetent the duty of a Magistrate is with the Nature of a Father, I will observe that notwithstanding a Law was given to *Adam* and all his Sons, to establish judicatures according to the Tradition of the *Jews*, as may be seen in Mr. *Selden* his Book *de jure Gentium secundum Hebraeos*, which Law by the way had been supervacaneous, if the Power of a Prince did belong to *Adam* in the right of his paternity, and a Government had been provided for them by their Birth. Yet I say notwithstanding that: There was such a Relaxation of Justice in the World before the Flood, because it could be only administered by a Father, or such who participated of the stock of love lodg'd in the common Father, from whom his Children did derive their tenderness, one to another, as they themselves sprang from him. That the World was grown so wicked with in 2 ages (as men then liv'd) from the creation, that a Universal deluge was brought upon the World, by the Just Judgment of God, for the outrageous & insufferable Wickedness, that had spread it self universally over mankind; 8 Persons only excepted. The overflowing deluge of Wickedness, that caus'd the deluge of waters can't be imputed, to a

more probable cause than to the indulgence and impunity, that the observed and understood nearness of Kindred, that all men stood then in to one another must naturally occasion.

This is a sad consequence of that natural Love in Parents towards their Children, which was intended for the propagation and advancement of mankind. But since that now we are estranged one from another in remote, and unknown degrees, & that prejudice is over. Here is a gentleman to destroy the World another way, and to undo us by unreasonable and unbounded power, which is a like apt to make the World fit for another Universal destruction, if it be not without more destroyed by it; doth endeavor to turn the exercise of such power into a Right, and to give it warranty from the Reason and way of our propagation, and by this means to destroy us faster, then we can be born and bred, and impair the Generations of Mankind, or render them extreemly miserable, or wicked which is much worse, extinguish the light of the world, which is Love and Amity, and destroy the encouragement and reason of almost all relative Morality.

What a Saturnine Father have we got, to make a golden Age, who ever would have thought, that the ^{sup} the most moving kindest, most tender pleasing, and beneficent instinct in Nature, planted by God the Father
of

of us all, for the propagating educating and improving humane Nature, should ever be made use of to found a Right of Tyranny, and Arbitrary domination, the greatest destroyer and depraver of Mankind. What Monster hath this last Age produced! a Christian, a Father, seriously endeavoring to persuade all Mankind, to offer up their Children to *Maloch* the Saturn of the Easterlings, who was but the Devil of Tyranny as the name imports.

This ~~seem~~ the true origen, and Fountain of Love and Amity, and the sociable Virtues which render men humane, from whence flows all the happiness of mankind, will by this Doctrine be corrupted and rendred unsincere and self designing. For when a Father performs an Act of Generation, it seems now he designs to add a slave to his Retinue, and when a Child is born there is another *item* added to the inventory of his Estate. If this Fountain be corrupted, there can be nothing sincerely kind after it in humane Nature. The *Leviathan* is out-done by this Gentleman, and hath not performed half so renownedly in the great Work of depraving Humane Nature, as our Patriarchal Knight will do, if his Admirers can bring him into vogue and esteem.

For the Author of the *Leviathan* allowed something good in Humane Nature, several equal propensions, which he terms her Coun-

sels, and sometimes adventures to call the Laws of Nature: But he concludes they are not practicable, and they are only fools who govern themselves by them.

But this Gentlemen will not allow Nature to be good in her first institution and designment, tho in this I think they are near agreeable, that Mr. *Hobs* made the Pourtraiture of Humane Nature in an agreeableness to his own evil Ingeny. And this Knight did set himself, when he made this his draught of a *Father* he could have no other Original but himself, or the Idea of the morose and sower Dr. *P.H.* his admired friend but by his Character he had at least misfigured his understanding, and made it his own Nature by liking it.

2ly, No more of authority belong'd to *Adam* over his Children, then does to any of his Children over his, for that this Authority proceeds from Nature, and Nature is a like in all men, the duty of their education, and the Authority over them, that is competent to that purpose, is as much incumbent upon them, as upon the Protoplast, the duty is so personal consisting in ~~it~~ that it cannot be transferred, or permitted absolutely to any other person by the Parents, nor can any man challenge a right to it, or discharge the Father from it, or require the same affection, submission and reverence, that is due from a Child to his Father.

To expect relative duties without Relation

is most unnatural, it is as impossible as incongruous, and we may as well love and hate rejoyce and grieve without the proper objects and incitements of those passions. The fundamental Rule of all morality, is that of *Simplicius* ἐν ᾧ οὐκ ἔστι τι καὶ κατὰ φύσιν. It is as certain as any proposition in Euclid, as the Doctrine of proportionable triangles, and received as such by all the Masters of Moral Philosophy, there is no other foundation of our duty to God or Man, or towards our selves this rule must declare it, and what ever is measured and allowed by this Rule, is commonly called, which is comprehensive of all that is honest, just, and fit, ὁ δὲ νόμος and the application of this rule is called by St. Paul λογίζεσθαι τὴν οὐσίαν, which when a man observes he is perfectly moral, a man may as well pay his debts by giving away his Money, be grateful to his benefactor by being beneficent to Strangers, as perform that duty he owes his Father to any but he that is so: It is impossible to separate the shadow from the Substance as to make that subsist by it self which grows by resultance from the state and condition of the person. Or that without that state of the person, from which it doth arise it should ever accrew.

3ly. Admitting *Adam* had a Sovereign Authority over all his descendents, which must grow (if there was any such thing) from some positive institution, and not from his paternity;

yet the natural Authority and duty of Parents towards their Children, continues entire together with Sovereign Power, and is not at all abated by it, and therefore cannot be the same. No Sovereign Power can extort the Children from their Fathers Authority and care: This is a duty in Nature before Governments. They cannot belong to the Government before they are *filiæ precepti*, and capable of the Conscience of a Law. It is a duty in Parents to Educate their Children, and a right they have in consequence to govern them, that cannot be taken from them. It is the Parents duty to form their consciences. They are appointed by God, the great Ministers of his Providence to the Children. That they perform this Office, he hath tyed them to it by the sweetest constraints and almost violences of Nature, by an irresistible love and ties of Endearment, that cannot be broken, this declares their Right of Authority over their Children, against any interposings of Sovereign Authority to its prejudice, let or hindrance. *Thomas Aquinas* positively determines, that it is not lawful for Christian Kings to baptize the Children of the *Jens* against the will of their Parents, for that (saith he) it is against the course of natural justice.

4ly, There is no footsteps in the Records of the old World to verifie this Hypothesis. That such Authority was so much as pretended to be used

used or exercised by *Adam*, but we find instances against it in the short History before the Flood. *Cain* received no sentence from *Adam* his Prince and Sovereign Judg, but from God himself, or rather from his *Shecinah* or some visible Representation of his presence.

Thence he obtained some degree of impunity and his life protected. No mention here at all of *Adam*, his taking the Tribunal or *Cains* arraignment, or of any pardon or indulgence granted by King *Adam*. *Lamech* that had Kill'd a man by mischance, did not alledge his case at his Father *Adams* Court, and the matter of extenuation of the Man-killing, we hear of no pardon of Course to be allowed, when the circumstances of fact had been first judicially considered.

How could a thing of such importance be omitted in the story of the old World, tho so short. It was of more concernment, than to know that *Tubal Cain* was the first Smith and *Jubal*, the first man that made a Musical instrument, to know the original nature and reason of Government.

Besides we find all the grand Children of *Noah*, becoming Princes of Countries, and the Sons and grand sons of *Esau* alike Dukes and Princes, that is at least absolute Fathers of their own Families, and ruling over such as were their slaves and dependents.

And the 12 Sons of *Jacob* are all called Patriarchs: When

When *Nimrod* played the Tyrant we find nothing said for his justification upon any Patriarchal right.

But if we consult the Traditions of the *Jews*, they will inform us of another original of Government, and that is this. They say that God gave several Precepts to *Adam* and his Sons, and *Noah* and his Sons, and one amongst the rest, that they should erect Governments, which his Sons could not have performed without Rebellion against their King Father, if *Adam* had been so as *Sir Robert Filmer* first dreamt.

Also besides that of making Governments, there was a Precept given them of honoring their Parents, *Selden de jure Natura secundum Hebraeos fol. 2792*. And therefore the Precept of honoring Parents, is a distinct duty from that of obedience to Governments. By this Precept they had Authority in general, to establish Governments amongst themselves, in the specification of which they were left to their own liberty and discretion, and therefore were not obliged to any single form of Government. It must be understood, that the Precept which required the Sons of *Adam* and *Noah* to establish Governments, required also every mans Submission to their Orders, Laws, and Decrees, when established.

Lastly, We will consider of the instances he gives of the Exercise of Sovereign Power, by Fathers

Fathers of Families, which are as impertinent to his purpose, as his Doctrine is groundless and precarious, but they are these. *Abrahams War and Judahs judgment upon Thamar.*

As to the first of *Abrahams* making War: We say we cannot allow, that making War doth argue any Sovereign Authority. It is sufficient, that he who makes it is under none to make a vindicative War Lawful. For an injured Person may in the State of Nature, vindicate wrongs by an authority derived from God and Nature to a just satisfaction: Because there is no competent judicature to appeal to for right and redress. But see how unhappy the Gentleman is. This very instance of his production is clearly against him, for if Sovereign Power had been Patriarchal, *Abraham* had been guilty of Treason, in making War without a Commission from *Melchizedech* the King of *Salem*, who as the Learned men conjecture, was *Shem* his Patriarch and Chief and known by him for such. But because *Abraham* the best man perhaps in any Age did not take a Commission from *Melchizedech* his Patriarchal chief. And yet he was blessed by *Melchizedech* when he returned from the War. We may conclude that neither *Melchizedech* nor *Abraham* knew of any such Patriarchal Sovereignty. And also from this great example it appears, that it is lawful for him, that is not a
Sove-

Sovereign, if he be not under any to make War.

I will not enter into a discourse, whence and how is derived the Authority of making War and capital Sentences, which must have the same reason to warrant both which hath puzzled some great Divines. Dr. *Hammond* that great man was at a loss in this enquiry, and thinks that nothing but a Divine Authority can warrant them, which hath put them upon strange extravagant Hypotheses of Government, and sent this Knights brains a Wool-gathering. But this may satisfy any man of sense, that whatever is necessary for the general happiness of mankind, and for preserving peace in the world, and protecting the innocent, and disabling the mighty oppressors is more commendable to be done, then the Killing a man in his own defence is simply lawful.

As to his second instance of *Judah*, his Sentence pronounced upon his Daughter in Law *Thamar*, which he would have an exercise of Patriarchal Sovereign Authority. We say how could *Judah* do this by a Patriarchal Power, when *Jacob* his Father was then alive, and for all that appears *Judah* his Son was not extrafamiliar. Besides which is very unlucky, *Thamar* was then none of his Family, or of the Subjects of his Domestick Empire, for his Son her Husband being dead, she was free from

from the Law of her Husband, and ceased to be a Subject of his Paternal Kingdom. But Mr. *Selden* under the Authority of some Rabbins, which he cites in his excellent Book before mentioned Fol. 807. saith that, *Judah* might have the Office of a Prince or Magistrate in a district in that Country, and by that Authority might judge her according to the Laws of that Country. But what the Law was, and the Nature and reason of her offence, by which it became capital, is not understood as he tells us in the place before cited, I shall not trouble the Reader with unfolding the matter.

But why doth he trouble himself to make Kings, Fathers of their Countries, some cannot be so and some have no mind to be so, and yet they ought to be Kings. And some that have not been Kings, have been so and so styled, as the great M. *Tully*, for defeating the *Catiline* Conspiracy, He was by decree of the Senate call'd *Pater Patria*. Those are with reason truly called *Patres patria*, which either relieve their Country from miserable pressures, which is the civil death of a Nation, and for this reason our King hath the honor of being called *Pater Patria*, and we hope, that he will wear that honorable Title upon a second deliverance of us from a most deplorable condition. Or else such who bring the Nation to an exalted state of happiness, so much beyond their old state of things, that they seem to
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give the Nation a new civil Life, Being and Birth. For his etymological argument from the notation of the Word, it is too putid to be insisted upon, tho not more ridiculous than his *Hypothesis*.

But for that the reduction of our duty to our King, to the fifth Commandment, may seem to give some advantage to the Hypothesis, with Fathers who know no bounds of their power over their Children. It must be observed, that the Decalogue is not a compleat Rule of Morality. The decalogue comprised the Principal Laws of that common Wealth, which God their Law giver by a most Solemn Act of his Legislation, did more awfully oblige them to observe.

God that time was their King, Rebellion was as Idolatry, and the sin of Witchcraft and the Defection of one of their Cities to Idolatry, was punished as a revolt and Rebellion, *Deut.* 13. v. 15. He had provided for his honor and worship, and their Allegiance in the first Table, and did design by the 5th Commandment to lay the Foundation of all positive morality, by providing for a Reciprocation of kindnesses, by injoyning the gratitude and fitting returns of Children to their Parents, and by putting Children under obligations to be taught and instructed by their Parents. But our duty to Governors is more duly referred to all the other Commandments, because Govern-
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ment secures the observation of those Laws to us, by which we enjoy our selves, and ours freed from the Violations of Lust, Appetite, Fraud and Violence.

We do not honor our King by relief in his fortune, which is commanded to be done by our Parents in the precept of honoring them, our subsidies and Aids are not to that purpose, but contributions to the charges of the Government, they are the just price of our immunity & protection, from fraud and violence for which cause pay we tribute.

But whosoever he be, that hath more respect for this Knights works then I have, may find him more gently treated by a very worthy Gentleman, in a very candid and judicious book called *Patriarcha non Monarcha*.

But what is the meaning of these flattering Books, they cannot but be nauseous to His Majesty, who is a very wise Prince, and knows how senseless such Books are, and besides they make the People afraid, and the Nation unquiet from the apprehensions they give, that the Government will be changed. Notwithstanding the King hath given such solemn assurance to the Nation by his late Declaration, that we shall have frequent Parliaments, and that he will govern by Law.

They would have had a better market, for the Divinity they bestow upon Princes, with *Alexander* after he had lost his Virtue, and with those

those Vile Emperors whose Names are *Regum opprobria*, for such the flatterers of antient times Deified, those who had ceas'd to be men they made Gods, and when they had left nothing about them that was tolerable, they magnified their power, which was already most intolerable.

If the Kings hereafter would but read the History of Kings, under that conclusion, that a wise observer of Humane Events made after a long observation and experience, and would make experiments of the truth of it in their own reading, Kings would be glorious, and the Nations they govern happy and full of peace.

They would find therein so many effectual Documents to fear God and regard men, and govern them righteously.

*Si Vitam spectes hominum si deniq; Mores,
Artem vim fraudem, cuncta putes agere.
Si propius spectes, fortuna est arbitra Rerum.
Nescis quid dicis, sed tamen esse putas.
At penitus si introspicias & ultima primis
Connectas, solus rector in orbe Deus.*

Alciat.

People can be no happier than Government and Laws design to make them, though they do not always answer the good designments of the Government.

To what purpose then are these new Hypotheses

theses fram'd and published, Kings are exempted by their Office, and the sacredness of their persons from all fears, but the fears of Nature, and these can never be discharg'd. Those who do ill will fear ill Eternally, tho' their power were made little less than omnipotent, for the frame of Humane Nature hath made it necessary to be so. Besides God hath made one thing against another, there is a Divine Nemesis interwoven in the Nature of things, and God will always govern the World.

Omne sub regno durior regnum.

The great Mogul at his inauguration swears, that his People shall be at peace at home, and victorious abroad, afflicted neither with plague nor famine, but enjoy Health and Plenty all his days.

This seems extraordinary Pompous and Arrogant, but it means no more than this, that he will govern them so vertuously, that Gods Providence shall be always propitious to his People, and is no more in plain English, than what our Church offers up in her publick prayers for the King. (*viz.*) That he may govern us in Wealth Peace and Godliness, that he may live long and so govern us ought to be every honest mans Prayers. But after all these vain Hypotheses contriv'd, for making Kings

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absolute, it will be more easie for Kings to make their reigns unquiet, and turn their Kingdoms into Shambles.

But lastly, to revive the Antient Zeal of the true members of the Church of *England* against Popery. To rectify the mistakes of some Gentlemen of the Clergy about the Dissenters: And of our late Parliaments, and their proceedings in reference to them.

Let it be considered, how unreasonable their apprehensions are of any danger to the Church of *England*, from the desires of the House of Commons, of some indulgence or toleration in favor of the Dissenters at this time; especially when the Protestant Religion is so shrewdly beset, she hath reason now sure to take all such for her friends, that are heartily Enemies to Popery, tho not so skillful as they should be to ward off its assaults. Since the Papists presume to call them Fanaticks, tho exactly conformable to the Church of *England*, that will not assist to bring on the Popish Plot by disbelieving it; and put us in fear of the Fanaticks, by taking all the courses imaginable to provoke and exasperate them, and upon their discontents (which they maliciously heighten and by falshood and forgeries misrepresent): To graft thereupon a Pretens of a Protestant Plot, for a pretext to extirpate Protestantism and introduce Popery, which they impu-

impudently pretend to be of a more firm Allegiance to the Government than the Reformed Religion.

I pray let it be considered, that that which is tolerated is put under disgrace, even for that it is tolerated; and that which tolerates, even for that it tolerates, hath the Governing Authority, and in so much as it indulgeth, it obligeth to modesty and reason, and if that indulgence should be abused it may and will be retracted. It was never intended by the House of Commons, that the Church of *England* should be altered or modelled to an agreeableness to any form or sect of the separation, or prescrib'd to by any of the Dissenters, or that she should be made subject to any of their rules or opinions, or her Liturgy laid aside for directories, or which is worse undervalued to the profane way of extemporizing: For as generally used and exercised it deserves no milder a stile. That the Church should always govern by her own Wisdom in her own Province, and in those things that appertain to her, can never be deny'd her.

No man hath reason to say, tho he hath great cause to dislike the separation, and to have a bad opinion of the Dissenters, that he had rather submit to Popery than to any form of the Separation, for he need do neither except he pleaseth. No man that thus expresth himself, but will be suspected to seek an occa-

sion and pretens to become a Papist, and to make a defection from the Church of *England*.

But if these Gentlemen have such a displeasure against Schism and Separation (which certainly is the worst disease any Church can labor under, and at this time threatens the destruction as well of the Protestant Religion it self, as it doth to the Professors of all denominations) let this sharpen their zeal against Popery (which by its unhallowed arts hath occasioned and exasperated our Schism,) and put them upon the use of all means to reconcile if possible the Schism (that the Papists have already made, and by all means endeavor to continue) and take away if possible the occasion of it for the time to come: And thus defeat the Arts of the Priests and Jesuits for supplanting our Church. It is a most deplorable thing that our Church should be kept, rent and divided, in danger of being lost between Rituality and scrupulosity.

Though the Scruples of the Nonconformists, which I always thought, and do still think groundless, and unreasonable, have often moved me into some passion against them, yet upon consideration, I think this their Scrupulosity may be of God, and that some Men are by him framed to it. That he hath provided it, as a bare and obstacle in the Natures and Complexions of some devout Men, against any Innovations whatsoever, that dangerous ones may

may not steal upon the Church, for the better maintaining the simplicity and purity of the Christian Religion and Worship. But in saying this, I have said nothing, that is apt to give them a conceit of themselves, but rather to humble them: For the best Men are not govern'd by their Temper and Constitution, but correct them by their reason, and determine themselves by a clear and firm Judgement. What affrightment all this while either to Church or State, from this weak and pittyable Scrupulosity: Where lyes the Treason or Sacrilege, nay or so much as contumacy against our Ecclesiastical Governors which is so much upbraided to them?

The Christian Religion may be prejudiced by addition to, as well as subtraction from her rule: The Church of *Rome* by her additions hath almost evacuated the Christian faith.

Besides there may be a fineness in the outward mode of religious Worship in its self very justifiable, which may be not congenial to men of a coarse make. The Worship of God will always favor of the manners of the People; Men of dull capacity can scarce admit of any Ceremonys without danger of falling into superstition, or being vext with endless and incurable scruple, until for ease of their minds they throw them off.

But the wisdom of the best Law-makers hath considered in giving Laws, what the People

would bare, and not what is best to be enjoyed, and many things have been tolerated by them, which they did not approve, *ne majoribus malis de his octavo aut etiam ne vilescant sine minoribus leges.*

There is nothing more exposeth the Authority of Government to contempt, then a publick and an open neglect of its Injunctions. But where obedience to Laws is exacted under severe penalties, where it doth not greatly import the common good to have them observed, that Government is unequal and useth its Authority unjustifiably, *Leges cupiunt ut jure negantur.*

The consideration of the sad effects the Schism in our Church hath occasioned, the contempt that it hath brought upon our Ecclesiastical Governors. That Religion it self is thereby made the scorn of Atheists. That the Papists are thereby furnished with matter of objection, reproach and scandal to the Reformation. That every Age since it begun hath heightned the malignity of the Schism, that it seems now to despise the Cure of the greatest *Cassanders*. These considerations make it infinitely desirable to have it utterly extinguished.

There seems to be now left but one way of accommodating our Divisions, and that is, that we do not hereafter make those things wherein we differ matter and reason of Division.

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That the Children of the Light and Reformation, be at length as wise in this matter as the Church of *Rome*, which is at unity with it self under more and greater differences, then those that have troubled the peace of our Church, which is sufficiently known to all Learned men.

Had it not been happy, that this Schism had been prevented by the use of the power of the Church in Ecclesiastical dispensations, (If no Law had been made touching the matters that gave the first occasion to the Schism, it had been in the Power of the Church to have prevented it.) No good Bishop but would have relaxed the Canons that enjoyned these Ceremonies, about whose lawfulness there hath been so much Zeal mispent; and unwarrantable heat and contention raised, for the sake of peace and preservation of the Unity of the Church, to men peaceable and otherwise obedient to her injunctions. So dangerous it is to make Laws in matters of Religion which takes the conduct of Religion, in so much from the guides of the Church.

The beginning of contention is like the breaking out of waters, saith the wise man, and they are as soon as begun more easily ended. Before the Contenders have exasperated one another with mutual severities and contumelies, which at every Return encrease, until both sides loose either their virtue or the Reputation of it.

Can any man imagine that any prejudice can accrew to the Church of *England*, if she did enlarge her Communion by making the conditions of it more easie, especially if this may be done without annulling any of her institutions, which the better instructed Christians will always and the Weak may in time devoutly observe. But till they can they may be received and retained of her Communion, and not be rejected by her censures, tho they do not submit to all of them at present : Will it be any prejudice, that the Number of her Bishops be encreased, and that suffragans be appointed or approved by the present Bishops, *in partem sollicitudinis*, as was enacted by the statute 26. *H. 8.* cap. 14. Which Law was repealed by 1. 2. *P. M.* and revived by 8. *Eliz.* cap. 1. These suffragans were not intended to participate of their honors or Revenues. Had it not been much more eligible to have dispensed with invincible scruples, rather than a schism should have been occasioned, which the longer it continues will be more incurable, and with greater difficulty accommodated; as it grows likewise more mischievous. *Is it fit that the peace should be hazarded, or the Nation put with reason or without reason in fear of it : Or a Kingdom turned into a Shambles for a Ceremony, or a Ritual in our publick worship, which if omitted would leave the exercise of it solemn and decent.* For no man knows the

the obstinacy of inveterate prejudices, founded perhaps in the very complexions and Natures of the dissenters, hardned also in their way by observing, how little effect Laws have had for reducing their Numbers, and also how unpracticable any severity is in the present broken and distracted state of the Nation. Why may not standing at the *Sacrament* be tolerated (tho kneeling is the devoutest gesture, and to me most agreeable) when it is a posture of Prayer enjoined in the Primitive Church, in their solemn meetings for Divine Worship, between the Feasts of *Easter* and *whitsuntide*. Why may not the signing of the Cross in *Baptism* for the sake of peace and unity be dispensed with, where desired when the *Sacrament* is intire without it? Why may not our publick *Liturgy* be changed and altered, tho it may be defended as it is, and as it is entertains the devotions of the best men, meerly for this reason, because it is not liked in some parts of it by some men, yet truly devout? Besides it is the wish of some excellent persons of the Church of *England*, that our publick offices were more and those we have, not so long, and that the Church had a greater Treasury of Prayers, and by variety of Forms for the same Office were enlarged in her spirit of Prayer, and her publick Devotions heightened. Why may not the *Rubrick* be altered as general scruples shall arise, by the Authority of the
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the Church, which would not lessen her Authority, but advance the esteem of her Wisdom in the exercise of it, when she useth it for edification?

It is much better sure to give place to an innocent opinion, when entertained by considerable Numbers, tho a mistake then to keep up contention and strife. Peace in the Church is better than precise and nice orthodoxness, and Union is to be preferred before unnecessary truth, which is of no more importance to our salvation, then one of *Euclids* propositions, tho to be sure not so certain and of less use.

The business of the Church is not to make men great Clerks, to improve us to the subtilty of the Schools, but to build men up in the Faith and Love of God, by which they may be instructed to every good Work. Her aim is not to make men courtly in their behavior in our Churches, but truly devout, and true devotion will never fail to make the Publick Worship solemn, and advance it beyond a decent formality.

But I would not be mistaken, it is not the Dissenters I intend to befriend, but the Church of *England*, for as for them I declare I have no liking to any thing they say or do, and am especially dissatisfyed with their very bad manners. It is difficult to abstain from an invective, but that I think it would be thrown away upon them, and that they are at present

sent incorrigible. This is not the season for instructing their Wisdoms, we must wait for the *mollia tempora fondi*. I thus conclude since that excellent person the Dean of *Pauls* hath been treated by them, with such petulancies and rude insults for his Sermon of the mischiefs of separation. If a discourse managed with almost irresistible reason, candor, temper and Address be matter of exasperation, and they turn again and are more hardned in their obstinacies, and become more confirmed in their separating way, nothing but their own thoughts, and the consideration in what a desperate condition, they have brought the reformed Religion by their Separation will reclaim them.

But it is expected that Governments should be wise, that they manage and controul the Follies and Weaknesses of those committed to their care, that they may do the least mischief to themselves and others, and by prudent and practicable methods amend and reform them. The most froward weiward and stubborn Children give their Parents the most care, and opportunities of exercising the most tender love for them, tho they can take no complacency in their awkerdness. The Church of *England* is concerned to retain all her Children in her Family to shut out none by abdication, that their numbers be not few, and she be ashamed when she speaks with her Enemy in the Gate.

Gate, Not to provoke any of them to wrath, least they forsake her and turn against her when distresses shall come upon her. She hath reason at this time sure to make her Discipline easie, and to learn of the Church of *Rome* to be more comprehensive. Their Doctrin of comprehension is so large, that it destroys the Religion to encrease the Number of Professors, but I mean no more, than that positive and alterable institutions may give place to the peace, security, and preservation of Religion it self, to whose service they were first fram'd and design'd.

It hath been heretofore, of old it hath been said *Mores Leges in potestatem pertraxerunt suam*. *Plato* form'd an *Idea* to himself of a Common Wealth, without respect to the manners of men, but he writ another, which he calls *ἡ πολιτεία*. *Origen* in his Book against *Celsus* applyes to *Moses*, the Answer of a famous Law-giver, who asked *ἡ τῶν ἁλλήλων ἐθέλο τοῖς πολιταῖς νόμους*, the Answer was *ἡ τῶν ἁπιδὰς ἁλλήλους ἀλλοτρίων ἐθέλο τοῖς ἁλλήλους*. And we all know what God permitted to the *Jews*, in the matter of Divorce for the hardness of their Hearts. When all is said People must be govern'd as they can.

But in the mean time, it is pity any of our zeal and indignation should be mispent, when we have use for it all against the Church of *Rome*, the source whence all our divisions spring. To which we owe the first separations, that were

were made in our Chutch, which appears by undenyable Records, published by Dr. *Stillingfleet* in his Book, called the *Unreasonableness of Separation*. How they have propagated, multiplyed, exasperated, and promoted our divisions, to tell you would make a Volume, besides no Protestant is now to know it. I have only this further to observe, that the Church of *Rome* at first only design'd by the Arts of dividing us, and breaking us into several Communion, to disgrace the Reformation, to make our Spiritual Governors Pastors and Teachers, lose their Authority with the People. To deprave our Religion with licentious opiniaistre and absurd dogmatizing, to load our departure from that Church, with the mischief of innumerable Schismes, and to make us reconcileable to the Tyranny and impostures of that Church, from the vain opinions and licentiousness of the Sectaries, who have been seduced, managed, inflamed and made wild by their imposturous Arts and Deceits.

This I believe was only at first designed by the Priests, but now they apparently design by the Dissenters to destroy the Church, or by the Church to destroy the Dissenters, that they more easily come to rights with her. They imagine the Dissenters are very numerous, and that the Nation is fallen into two great parts, that the Dissenters numbers are vast. But God be thanked they neither make our grand Jury
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men, nor the common Halls of the City of *London*, for choosing the Lord Majors or Sheriffs. And I challeng any man to give me a List of all the Names of Dissenters, that were of the House of Commons in our two last Parliaments, I am sure they will not make an Number, but they reckon the Numbers of Dissenters by the care they have taken to encrease it. They used great art to continue the Separation when His Majesty was restored: Since Laws have been made to raise the Animosities of Dissenters, but scarce ever executed for repressing them. If for any reason of state the Laws here and there, and for a spurt have been exacted, secret comforts and supports have been given to their Preachers of greatest Authority with them. And when they have seem'd to preach with the courage and zeal of confessors to their Auditors, they have been assured not only of indemnity, but have received rewards. How prosperously did the work of separation go on by these Councils of our *Achtlophets*, by these means they concluded it would be heightned, that it would admit of no terms of an accommodation. How insolent were their Harangues more raking with their deluded Auditors, while they apprehended them, acted with an invincible zeal of Religion. What Animations did their People receive to defy the Church and her Authority, when their Preachers despised Fines
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and Imprisonment to their seeming out of pure zeal against her Order.

It is well known several of them were in Pension, and no men have been better received by the D. than J. J. J. O. E. B. and W. P. &c. Ringleaders of the Separation: Besides that Popish Priests have been taken and executed for preaching in Field meetings in *Scotland*. They have raised there a sort of *Enthusiasts* more wild and mischievous, than any we had amongst us in the times of licentiousness. They have had notwithstanding great Lords that have patronis'd them who were always well received in their applications in their favor, at St. James's, and several of their Preachers who were not Priests, have received exhibitions and pensions for their Encouragement. It was necessary that the Fanaticism planted in *Scotland*, should be very loathsome to make that Nation abate any of their zeal for the Protestant Religion, or to neglect their fears and apprehensions of Popery, or to make the least step towards it.

Awake you drowsie Sleepers, open your Eyes: the Sun is risen, there is light enough to fill your sight, if you would look up and were willing to see. Could any thing be conceiv'd more apt, to bring the Church of *England* into contempt and scorn with those of the separation then to have Laws made in her favor, penal Laws which are thought to be of her procurement, and not executed. Vain and

and Ineffective anger is always returned with contumely, scorn and hatred. *Cupide conculeatur nimis ante metitum.* And so it hath succeeded in this case, nothing hath been more passable than the basest Scurrility upon the Church, the Bishops and the Clergy. The Atheist, the impious and profane have listed themselves Fanaticks, that they might have the greater Liberty of reviling Religion it self with impunity, Consider how the Church of *England* is used, which is truly the Bulwark of the Protestant Religion. About ten years since they designed to flight her works, and demolish her by a general indulgence and toleration. And now they intend to destroy her Garrison, those that can, and will defend her against Popery. By one of their Pamphleteers, the separation is called an usurpation upon the Government, and all the Dissenters (as such only) Rebels and Traitors to the King. The same Gentleman would perswade the World, that the ready way to extirpate Popery is by rooting out of Fanaticism, whither (saith he) the Fanaticks bring on the Jesuits plot, or the Jesuits the Fanaticks is not a farthing matter. But in the meantime, that the Papists have a plot on foot needs no proof. That any sort of Protestants are engaged in a plot cannot be proved. But all honest Protestants of the Church of *England*, think it more righteous to punish the Deceivers, and pitty the Deceived, and wish them only cut off,
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that make divisions. It is one way of curing or rather of extinguishing the disease to Kill the Patient. But no Prince did ever yet provide Cut-Throats for his People, in epidemical diseases instead of Physitians. But if the Papists could arm other Protestants against Dissenters, there would be the less work for Papists to do. And they will be sure to requite them, for this favor with *Polyphemus* his curtesie. For to give the Devil his due, they are not themselves so fond of Massacres and destruction of Hereticks, as to envy that employment to any other, that will undertake it. They had rather any other party of Men should do the Drudgery for them. Besides what one sort of Protestants shall execute upon another, will give them better pretence and more hardiness (if they wanted either Pretence or Resolution to destroy such as they call Hereticks) to execute the like destruction upon the Church Protestants, who certainly differ more from the Papists then the Separatists do from our Church. Sure there is good Reason they should be more sharply treated by the Papists, than they treated the Dissenters. And if they are in such sort us'd they must lay their hands upon their mouths, and be silent before their Persecutors, and acknowledg the righteous judgment of God, in bringing such tribulation upon them, from their Enemies wherewith they troubled their own Brethren.

But there are better ways of putting an end to the Popish Plot, then by putting it in Execution for them. (That is to say) by suppressing that contumacy, that is grown so rife in the Dissenters against the Church of *England*, by putting the Revilers of her Establishment and Order under the severest Penalties.

By the Church her condescensions and indulgences to those that are weak and scrupulous, & the peaceable Dissenters, such condescensions will not abate but magnifie her Authority. The Church of *England* will not be by this means lost, but her Governance preserved, especially if the Relaxation that shall be made proceeds from her *ex mero motu*, and is not imposed upon her by any secular Authority. Nay she will become by this means more ample and venerable. What Glories will shine upon the Heads of the Bishops : We shall all rise up & call them blessed. They will attain an *ambrosius* here, and receive divine Honors while they live. Their Order will be recover'd into the highest Veneration, and it will never be after a question in the *English* Church whither the Order of Bishops be Apostolical. The Parliament will make all Laws yield and comply to such happy peaceable and gracious Intendments. All the People will honor them as their common Saviors, that shall thus snatch us from the very Brink of Ruine, and render the Designs of the implacable Enemies of the Church ready to take effect to the destruction

destruction of our Religion, and the Nation, utterly defeated.

But what punishments can we think too severe upon any, that shall be guilty of such insolent Iniquity, as not to allow, that Liberty to the Church which they seek as a favor from her to themselves, that will not let the Church escape their Censures, when she graciously exempts them from her Censures, and pittys their Errors and Follies. What Fines and Imprisonments, Pillories and Scourgings do they deserve, that persecute the Church with Revilings, when they themselves are tolerated. Their condemnation must be just, what ever their doom be, themselves being Judges: They will suffer as Evil doers and disturbers of the peace, not for their Religion, but for a most extravagant and intolerable unrighteousness. They who will not tolerate others are themselves for that reason most intolerable. Against these our Laws are to be sharpen'd, and their iniquities to be punished by a Judge. But the Statute of 35 *Eliz.* which punisheth dissatisfactions, and peaceable withdrawings from the publick worship with exile, and death declares how odly the business of the Separation hath been managed, and with what disadvantages to the Church; as it doth also the impracticableness of Laws, that make perhaps invincible prejudices; and modest and peaceable dissatisfactions capitally criminal. The execu-

tion of this Law is scarce possible. It is by no means agreeable, either to the Christian temper of our Church, or His Majesties great Clemency of which he hath assured us in the general course of his Reign. And especially for that that Law hath been very rarely proceeded upon. A Gentleman that lay in *Cambridge* Goal, under the Judgment of that Law was reprieved by His Majesty, with a great dislike expressed by him against that and such like severities. What ever extravagances of a few wild Fanaticks of that Age occasion'd that Law : the State of the Separation and of the Nation being quite alter'd from what it was then ; the execution of this Law now, would be something like a Sheriffs serving a Writ out of Date, in another County which can have no effect but mischief to himself.

While our Dissenters are thus reasonably indulged, and strictly obliged to their peaceable behavior, they can give no apprehensions to the Government either in Church or State. This is all that is designed, and all that they ought to have, and this certainly would be readily yielded them in this present juncture, especially if the Evils of the late unhappy times did not stand upon their score.

But I perswade my self, that this course if it had been heretofore taken would have prevented one great cause of our late Troubles, so it will in such measure prevent them from returning, as the separation can be accounted the cause of them

them. As for the Sacrilege and Spoil, which was then made upon our Church it could never have happen'd, but upon the dissolution of the Government, nor can it ever happen again.

That War would have been impossible, if the Church-men had not maintained the doctrine, that Monarchy was *Jure Divino*, in such a sense that made the King absolute, and they and the Church in consequence perished by it.

But God be thanked, we see the Church again restored to her endowments, grown wiser than to desire to hold that precariously, and at pleasure, she doth enjoy by an unmovable legal Right. Of the three Estates of this Kingdom (for to suspect any such thing of the King would be unpardonable blasphemy) there can be no reasonable Suspition. Though of the House of Commons it is become now lawful to suspect and say any thing, that is evil. But no man but the Villains, that design by dishonoring them, to change the Government hath reason to entertain such a thought. The Members of the Commons in our latest Parliaments, were all upon the matter entirely conformable to the Church of *England*. They were persons of the best Estates, Reputation and Honor in their Countries: And they, or such as they are like to make our succeeding Parliaments.

I have leave to put them under the imprecation of the severest Curse, if ever they do sa-

crilegiously impair the Church her Revenues. And I desire it may be assisted with the hearty and passionate desires of all good Christians, that so the curse I now pronounce may operate upon them who shall incur it. He that designs, contrives or consents to spoil the Church, of any of her Endowments; may a secret curse waste his substance. Let his Children be Vagabonds and beg their bread in desolate places. Besides I know it is meditated, and design'd by many, and the best Men, that use to be sent to Parliaments, to redeem in part, that infamous Sacrilege, that was committed in the times of H. 8. When the Appropriations of Rectories made to religious Houses which had the cure of the Parish, and ought at the dissolution of the Monasteries to be presented to, were vested in the Crown whereby not only the Church was rob'd, but the People cheated of their Tythes which were theirs to give, tho not to retain, and their *premium* for the Priests Ministrations, which are now often most slenderly and sometimes scandalously performed. As also to disencumber her Revenue of the Charges and impositions of First-fruits and Tythes, which were imposed and exacted by the Pope, upon his pretence of being the œcumenical Pastor and High Priest of the Christian Church, and at that time confer'd upon the Crown, and are as unreasonably continued, as any thing can be that hath a Law for a pretext. But for
this

this a compensation may be given to the Crown, and some way will be found out for Augmentation of Vicaridges and reindowment of Churches, that lost all in that unparrallel'd Sacriledge, committed by the unsatiable Avarice of that haughty and luxurious Prince. These designs employ the care of a great Number of our principal gentlemen, to purge the sin and dishonor brought upon the Nation by that extraordinary King.

But if there were reason for any fear, that the Nation could again incur the guilt of sacriledge. What Warranty can this give to any of her Clergy to slack or abate the Zeal, that is due for the purity of her Doctrine, prudence of her discipline, and her commendable decent and intelligible devotion. Are they worthy to be named of her, that are ready to dissent her out of fear of a remote possibility, that she may not always have such largesses, as she now bestows upon her Sons ? Will they prefer the gift to the Altar, and declare all their godliness to be gain ? To suffer Popery for such a consideration to be induc'd upon her, is a far worse and more detestable sacriledge than that they pretend to fear. This is to make the *Anathemata* of the Temple to inserve to the dishonor of the *Numen*. To desecrate the Altar for the sake of the gift, and will by the just judgment of God (I fear) bring the abomination of desolation again into our holy places.

Let none of her Sons for the obtaining a dignity or a capacity for a double benefice betray her by neglecting her interest, thinking with themselves that she will otherwise be supported, for this their doings is no less than the sin of *Judas*, who took money to betray our Lord, imagining, that he would by a Miracle rescue himself from the hands of those to whom he sold and betray'd him.

The honest of our Clergy will have little satisfaction, when that day comes, when they shall be reduc'd to Prayers and Tears, if they are failing in any thing, that they may lawfully do to prevent that miserable State. Their Tears will be as water spilt upon the ground, and their Prayers will never find acceptance with God, nor be returned into their own bosom.

*Disce Miser pigris, non flecti numina, votis.
Præsentemq; adhibe, dum facis ipse, Deum.*

But above all those fine men are not to pass unproved, who are preparing Pretences for their Revolt to the *Roman* Church. They tell us, that the Reformation is depraved, and Popery it self is much amended since the Reformation, that it is not so grossly superstitious (tho her superstitions are still enough to stifle Religion) nor so fabulous in her Legends (she need make no new ones since she gives Authority still to the old) nor so imposterous in her cheats (for her Priests have not been *hocus pocuses* of late us'd
so

so many tricks of Legerdemain, and presented their puppet plays of moving & squeaking images) since the Reformation as before.

But they may know, that the reason why we have not maintained the dignity of the Reformation intire is this, for that Popery hath not been utterly extirpated from amongst us tho their frequent Treasons, and their notorious seductious have deserved it. By its continuance amongst us, and the resorts of their Priests hither, it hath created and fomented divisions amongst us, and corrupted her Children from their obedience to her guidance and instructions, but she her self is still the same she was, the Reformation of the Church is still intire. She hath made good her departure from the Church of *Rome*, her Adversaries have not been able to convict her of any fault therein, and by an easie victory she hath triumphed over all their oppositions.

And tho Popery appear not altogether so deformed by her Priests Artificial dress, and the Representations they make of her to seduce us, and entice us to come again under her yoke, yet we know she hath more established her Tyranny, by the Council of *Trent*, and more corrupted her Morals by her modern Casuists since the Reformation, and thereby hath rendred her self more detestable, and for ever to be avoided. But though it may be true, that the Popish world is beholden to the Reformation, and Popery it self is thereby amended in some overt

overt things, and reformed in those Countries that have not reformed from her. For in the Light of the Reformation they have seen Light, and have been ashamed of some of their works of darkness, & do not bring into present use some of their gross Impostures, and some worse than Pagan superstitions. Yet when this Light is extinguished it will be a most dismal and eternal Night upon the Christian world. If we return to her our Ears will be bor'd, and we shall be irredeemably enslaved.

The spirit of Popery if it returns and possesseth us again, that hath been walking in the reformed Countries as in dry places seeking Rest and finding none, and finds us thus swept and garnished, will bring with it seven Devils more wicked than it self, and our last estate will be worse than the first.

The Pride, Cruelty and Avarice, Domination and Luxury of their Priest-hood, will be aggravated upon us, and the minds of the Laity, more lowly depressed by superstition and ignorance. The Gospel of Cardinal *Palavicini* will be the Canon of the Christian Religion or it may be something worse, for who can tell what will be the Religion, that that Church will offer in process of time, to the World under the Christian Name. When the Pope by his pretended infallibility, may make the Christian Religion what he please, by interpreting, adding, altering or detracting with an uncontrollable

able Authority. For us therefore to become Papists to return to the Church of *Rome*, acknowledge the Popes infallibility (there is no other way to become Papists) is virtually to betray the Christian Faith to renounce our Allegiance to our Lord Christ, to prefer the Bulls of a Prophane Pope, to the Holy Oracles of God, and the Revelation of Jesus, God Blessed for ever.

With this Religion therefore we can never make an accommodation. We may as well make a Covenant with Hell. This (as Dr. Jackson one of the glories of the Church of *England*, in his Book call'd the *Eternal Truth of Scriptures*, vehemently admonisheth us) admits no terms of Parly for any possible Reconcilement, whose following words 'to this purpose, I shall here transcribe.

The natural separation of this Island, from those Countries wherein this Doctrine is professe, shall serve as an Everlasting Emblem of the Inhabitants, divided Hearts at least in this point of Religion: And let them O Lord be cut off speedily from amongst us, and their posterity transported hence, never to enjoy again the least good thing this Land affords: Let no print of their Memory be extant so much as in a Tree or Stone within our Coast. Or let thir Names be such as remain here after them be never mentioned, or always to their Endless shame: who living here amongst us will not im-
print

print these or the like wishes in their Hearts, and daily mention them in their Prayers.

*Littora Littoribus contraria, fluctibus undas,
Imprecor arma armis, pugnent ipsiq; Nepotes.*
which herthus renders.

Let our, & forain Coasts, joyn Battel in the Main,
Ere this fowl Blasphemy Great Britain ever stain.
Where never let it come, but floating in a Flood,
Of our, our Nephews & their Childrens Blood.

I shall only subjoyn my hearty Desires and Prayers, that we may all fear God, and be zealous for his true Religion. Honor the King, and firmly adhere to the Government, and in our several places steadily oppose and resist those Villains, that are given to change. And that by our Union we may defeat the crafty Designs of our cruel and implacable Enemies, who if they can continue those Divisions they have made amongst us by their wicked Arts, will certainly at length destroy us: who are bent upon our Destruction, though they themselves perish with us, and we cease to be a Nation, and our Language be forgotten in a forain Captivity.

Sir

Now I have given you my Answer to your Reasons, to dissuade me from publishing the Argument for the Bishops; by representing how few of the Clergy can with Reason be thought guilty of Opinions, so mischievous to
the

the Church and State, which you charge to have generally corrupted them, and how easily and with little consideration they will be laid aside by them.

I will make no other Apology for the publishing this, than that I have communicated these thoughts to no Man alive, either of the Church of *England* or any other Demominati-on, or consulted any Mans advice about it. That I can serve the design of no party of men herein, nor any particular design of my own. I wish, they can be serviceable in the least Degree to publick Good. I have had them by me a great while, and have consider'd them under the several Varieties of Temper, that our Bodies are disposed to, which induce different thoughts, and various Apprehensions in most things, under the several passions, that the fluctuation of publick Affairs have occasioned; under the Ebs and Flows of Hopes and Fears in reference to the state of the Kingdom, for some length of time. And finding them to have the same appearance, and to give me the same satisfaction in all the several Postures and Views, that I could take of them. I assure my self I was sincere when I thought, and that they result meerly from my Judgment (such as it is) uncorrupted. that I am not perverted or biased by any secret passion or desire of any sort, which many times lurk and steel upon us, deceive us unawar's, and undiscernedly abuse us. Sir,
the

the Summ of my Apology is this, that I know
my self sincere of honest Intentions, mov'd by
nothing, but a hearty love and affection to our
King, Religion and Country, and for what any
man shall think of me, I am not Solicitous,

Yours T. H.

F I N I S.

E. J. M.

